

NEBRASKA DEPARTMENT OF REVENUE

Title 316, Chapter 1 – SALES AND USE TAX REGULATIONS

REG-1-001 NATURE OF THE SALES TAX

001.01 The sales tax is imposed upon the gross receipts from all sales, leases, rentals, installation, application, repair, or maintenance of tangible personal property, the gross receipts of every person providing or installing utility services, the gross receipts of a retailer of intellectual or entertainment properties, the gross receipts from the sale of admissions, the gross receipts from renting or furnishing accommodations or lodging for periods of less than thirty days, and the gross receipts from the sale or providing of certain enumerated services. (Reg-1-007, Gross Receipts)

001.01A For the purposes of the sales and use tax regulations, the term property shall mean all tangible and intangible property, rights, licenses, and franchises subject to tax under section 77-2703(1) of the Nebraska Revised Statutes.

001.02 This tax is not upon the article sold, but upon the transaction called the sale. The term “sale” includes installment, conditional and credit sales, and includes any transfer of title or possession, segregation in contemplation of transfer of title or possession, exchange, barter, lease or rental, conditional sale, or otherwise in any manner or by any means for a consideration.

001.03 The amount of sales tax collected is a trust fund held by the collector that belongs to the state. Any sales tax that is improperly or erroneously collected also belongs to the state and must be remitted.

(Sections 77-2702.07, 77-2702.14, 77-2702.15, 77-2703(1), and 77-3905(6), R.R.S. 2003. October 1, 2003.)

REG-1-002 USE TAX

002.01 Use Tax in General. Use tax is not a duplication of the sales tax. The sales tax and the use tax complement each other and together provide a uniform tax upon the sale, lease, rental, storage, use, distribution, or other consumption of tangible personal property and certain specified labor and services. The tangible personal property, labor, and services which are included in the sales and use tax base are described in Reg-1-001.01, Nature of the Sales Tax.

002.02 Use Tax Imposed. The use tax is imposed upon the storage, use, distribution, or other consumption of tangible personal property and certain specified labor and services when the purchase of the tangible personal property, labor, or services would be subject to sales tax under Reg-1-001.01, Nature of the Sales Tax. Use tax applies whenever the sales tax has not been paid.

002.02A Any property, as defined in Reg-1-001 sold, leased, or rented by any person for delivery in Nebraska is presumed to be sold, leased, or rented for storage, use, distribution, or other consumption in Nebraska, until the contrary proven. The burden of proving that any property delivered in Nebraska is delivered for a purpose other than storage, use, distribution, or other consumption in Nebraska is on the person who purchases, leases, or rents the property.

002.02B If sales tax has been properly paid on the sale, purchase, use, or other consumption of property or services in another state at a rate equal to or greater than the rate in Nebraska, or if sales tax has been properly paid in Nebraska, no use tax is due. (Reg-1-071, Credit for Tax Paid to Another State)

SALES AND USE TAX REGULATIONS

002.03 **Remittances.** Use tax is paid directly to the Nebraska Department of Revenue (Department) by the purchaser. A permit is not required.

002.04 **Exemptions.** Use tax does not apply to the following transactions:

002.04A Transactions where the proper amount of Nebraska and local sales taxes have been paid, including sales tax remitted directly to the Department by a purchaser who holds a direct pay permit (Reg-1-097, Direct Pay Permit) or certificate of exemption for direct mail (Reg-1-105, Direct Mail);

002.04B Purchasing, leasing, renting, storing, using, distributing, or consuming property where the transaction is exempt from sales tax;

002.04C Transactions where the property has been used for its intended purpose in another state before it was brought into Nebraska. This subsection does not apply to motor vehicles, motorboats, or airplanes (Reg-1-020, Motor Vehicles, and Reg-1-067, Aircraft and Related Services);

002.04D Transactions where the property: was purchased from a seller not engaged in business in Nebraska, nor licensed to collect Nebraska sales tax; is only stored temporarily in Nebraska; and is subsequently taken to another state or processed, fabricated, or manufactured to be used for its intended purpose in another state;

002.04E Removing building materials from inventory for a construction project in another state, when the building materials were purchased from a seller not doing business in Nebraska, nor licensed to collect Nebraska sales taxes (Reg-1-017, Contractors); and

002.04F Purchases made from commissaries, base exchanges, ships' stores, or voluntary, unincorporated organizations of personnel of any branch of the Armed Forces of the U. S. by any person authorized to make these purchases.

002.05 Use tax is due on the following transactions:

002.05A Purchases for delivery in Nebraska from out-of-state retailers when the applicable state and local sales taxes have not been paid;

002.05B Retail purchases made in this state when the applicable state and local sales taxes have not been paid;

002.05C Purchases at retail from federal government agencies and instrumentalities not required to collect Nebraska sales taxes, except as provided in Reg-1-002.04F;

002.05D Purchases where an exempt sale certificate was originally given, but the property is subsequently put to a taxable use;

002.05E Use of property which was originally purchased tax-exempt using a resale certificate, but is later used for personal or business purposes;

002.05F Purchases from out-of-state retailers of property that is delivered or used in Nebraska and would be taxable if purchased in Nebraska, even if the purchase of the property is exempt in the other state; and

002.05G Purchases of property in Nebraska that is manufactured, processed, or fabricated in another state and that is not used for its intended purposes in the other state after its manufacture, processing, or fabrication.

002.06 Use of Property Purchased Using a Resale Certificate. If a purchaser who gives a resale certificate makes any use of the property other than retention, demonstration, or display while holding it for sale, lease, or rental in the regular course of business, the use is taxable to that purchaser as of the time when the property is first used in Nebraska. Except for aircraft as provided in Reg-1-067, Aircraft and Related Services, the sales price of that property is the measure of the use tax. The tax rate is the rate in effect at the time of first use. (Reg-1-035, Consumption of Untaxed Property.)

002.07 Calculating Use Tax. The amount of use tax is computed by multiplying the sales price of the property by the applicable tax rate in effect at the time of first use. The rate applicable for use tax is the same as the rate for state and local sales taxes. Sales price means the total amount of consideration for the property received and includes cash, credit, property, and services rendered without any deduction for the cost or other expenses of the seller, charges for delivery, installation, or any other amounts charged by the seller to complete the sale.

002.08 Persons holding a sales tax permit may report and pay all use tax due on the Nebraska and Local Sales and Use Tax Return, Form 10, or a Nebraska and Local Business Use Tax Return, Form 2.

002.09 Persons who are not required to hold a sales tax permit, but who are liable for use tax, must pay the tax directly to the Department using a Nebraska and Local Business Use Tax Return, Form 2, or a Nebraska and Local Individual Use Tax Return, Form 3. Unless otherwise required by the Department, these persons must file returns annually if the expected annual amount of tax will not exceed \$900. If the expected annual amount of tax is between \$900 and \$3,000, the returns must be filed quarterly. Those with expected annual amounts of tax greater than \$3,000 must file monthly.

002.09A Persons who are registered under the Streamlined Sales and Use Tax Agreement (SSUTA) may follow the filing frequency guidelines outlined in the SSUTA.

002.09B Persons who are not required to hold a sales tax permit may also pay use tax on a Nebraska Individual Income Tax Return, Form 1040N.

SALES AND USE TAX REGULATIONS

002.10 Returns that are not filed electronically must be properly signed. The return and the remittance are timely filed if mailed, postage prepaid, on or before the 20th day of the month following the close of the reporting period.

002.10A When the 20th day falls on a Saturday, Sunday, or an approved holiday, a return or remittance is timely filed if mailed, postage prepaid, on the next succeeding day which is not a Saturday, Sunday, or an approved holiday. A U.S. Postal Service postmark will be conclusive evidence of the date of mailing for the purpose of timely filing a return or remittance.

002.10B A private postage meter date or a date stamped by a private delivery service will be considered the date of filing if the date of the stamp is no more than four days before the date the return is received by the Department, excluding Saturdays, Sundays, or approved holidays. If the date of the stamp is more than four days before the date the return is received by the Department, the return is considered filed on the date received.

002.10C The Department will accept filing and payment methods pursuant to the SSUTA for Model 1, 2, or 3 sellers.

002.11 Unless there are amounts, words, statements, numbers, zeros, or figures shown on the use tax lines of a Nebraska and Local Sales and Use Tax Return, Form 10, submitting the form to the Department does not constitute the filing of a use tax return.

002.11A If the person files a return, the statute of limitations for issuing a deficiency determination is three years after the last day of the month following the reporting period, or three years after the return was filed, whichever is later. If the person fails to file a return, the statute of limitations for issuing a deficiency determination is six years after the last day of the month following the reporting period.

002.11B If the person does not enter amounts, words, statements, numbers, zeros, or figures on the appropriate line of a Nebraska and Local Sales and Use Tax Return, Form 10, the statute of limitations for issuing a deficiency determination for that reporting period is extended to six years after the last day of the month following the reporting period.

002.11C Statements by the person that no use tax is due, or entries made by the Department that did not come from a filed return, do not constitute the filing of a return and do not limit the statute of limitations to three years.

002.12 Remittances must be made to the Department in the form of electronic funds transfer, check, credit card, draft, money order, or other payment method as approved by the Tax Commissioner. Checks, drafts, or money orders should be made payable to the Nebraska Department of Revenue. Cash, post-dated checks, or postage stamps cannot be sent as payment. Cash may be used only when payment is made in person at an office of the Department.

002.13 Any person who fails to file the return or remit the tax due by the due date will be subject to a penalty equal to 10% of the unpaid tax, or \$25, whichever is greater. If the failure to file a

return or remit the use tax is a result of fraud, or an intent to evade the tax, a penalty of 25% of the amount of the understatement, or \$50, whichever is greater, may be assessed. Interest is imposed at the rate specified in Neb. Rev. Stat. § 45-104.02 from the due date to the date payment is received.

(Neb. Rev. Stat. §§ 77-1702, 77-1784, 77-2701.35 77-2701.37, 77-2701.42, 77-2703(2), 77-2704.30, 77-2704.31, 77-2704.44, 77-2706(3), 77-2708, and 77-2709, and McDonald's Executive Offices v. Nebraska Department of Revenue, 243 Neb. 82 (1993), J.C. Penney Co., Inc. v. Balka, 254 Neb. 521 (1998), and 4 U.S.C. § 107. June 24, 2017.)

REG-1-003 NON-NEXUS SELLERS

003.01 The responsibility to collect tax does not rest solely on Nebraska-based sellers. Every out-of-state seller, except as set out in this regulation, making retail sales of property or services for delivery in the State of Nebraska or leasing or renting property with delivery to lessees within this state must obtain a permit, collect, and remit Nebraska sales tax.

003.02 The seller is not obligated to collect sales tax when he or she is not engaged in business in this state as defined in Reg-1-004, Permits. Where no obligation to register for collection of the Nebraska tax exists, the seller may make application for a sales tax permit, and in fact is encouraged to make application for such a permit in order that the appropriate use tax might be collected from Nebraska customers. The Nebraska purchaser is required to pay the use tax liability directly to the Department of Revenue when a use tax is due and the retailer does not have a permit in this state to collect, report, and remit collections of use tax.

003.03 The Tax Commissioner may require non-nexus sellers to file the same return as is required from retailers collecting the sales tax or, at the Tax Commissioner's discretion, to file a separate return.

003.03A The Nebraska Department of Revenue encourages retailers in Nebraska who are making sales in other states to become licensed and collect the appropriate tax for the other state.

(Sections 77-2704.30, 77-2704.31, 77-2705, and 77-2708(1), R.R.S. 2003, and section 77-2703(2), R.S.Supp., 2004. April 12, 2005.)

REG-1-004 PERMITS

004.01 Every person engaging in business as a retailer in Nebraska must obtain a sales tax permit by submitting a Nebraska Tax Application, Form 20, or register through an alternative method as authorized under the Streamlined Sales Tax Agreement.

004.02 Engaging in business in this state means and includes any of the following:

004.02A Maintaining, occupying, or using permanently or temporarily, directly or indirectly, or through an agent, by whatever name called, an office, place of distribution, sales or sample room or place, warehouse or storage place or other place of business in this state;

004.02B Having any representatives, agents, salesmen, canvassers, or solicitors operating in this state under the authority of the retailer or a subsidiary of the retailer for the purposes of selling, delivering, or taking of orders for any property;

004.02C Deriving receipts from the rental or lease of property in this state;

004.02D Soliciting retail sales of property from residents of this state on a continuous, regular, or systematic basis by means of advertising which is broadcast from or relayed from a transmitter within this state or distributed from a location within this state;

004.02E Soliciting orders from residents of this state for property by mail, if the solicitations are continuous, regular, seasonal, or systematic and if the retailer benefits from any banking, financing, debt collection, or marketing activities occurring in this state or benefits from the location in this state of authorized installation, servicing, or repair facilities;

004.02F Being owned or controlled by the same interests which own or control any retailer engaged in business in the same or similar line of business in this state;

004.02G Maintaining or having a franchisee or licensee operating under the retailer's trade name in this state if the franchisee or licensee is required to collect the tax under the Nebraska Revenue Act of 1967; or

004.02H Doing any of the above as a retailer of services or on behalf of a retailer of services enumerated as taxable in Reg-1-007, Gross Receipts.

004.03 A separate application for each Nebraska retail location is required unless applying through the Streamlined Sales Tax Agreement.

004.04 Out-of-state retailers who are not engaged in business as specified in 004.02, are not required to obtain a permit. However, as a service to their Nebraska customers, those retailers are encouraged to obtain a license which allows them to collect and remit the tax in the same manner as a retailer who is engaged in business in this state. This will preclude the purchasers from having to accrue and remit their consumer's use tax liability directly to the Department of Revenue.

004.05 Upon examination and approval of the application, the Department of Revenue shall issue to the retailer the appropriate sales tax permit for each Nebraska business location. The permit is permanent, not transferrable, and valid only for the retailer in whose name it is issued and for the

conduct of business at the place designated. The permit must be conspicuously displayed at the place of business.

004.05A Retailers moving their locations may file a Nebraska change request to change the location address shown on their permits. New permits with the new address will be issued.

004.06 Retailers who temporarily will not be making any sales, may cancel their permits. When sales are resumed, the permits may be reinstated without any charge.

004.07 Upon violation of any of the sales tax statutes or regulations, the Department of Revenue may revoke or suspend the permit or permits of the violator. The procedures for revocation hearings are contained in Practice and Procedure Reg-33-008.

004.07A Following the revocation of a sales tax permit, the Department of Revenue will consider issuance of another permit only if all tax liabilities, including interest and penalties, have been paid in full, and sufficient security has been posted with the Department to ensure future compliance.

004.07A(1) The amount of the security required before the Department will reissue a sales tax permit will be no greater than three times the estimated average amount payable for the seller's reporting period or five times the estimated average amount payable for the reporting period in the case of persons habitually delinquent.

004.08 Anyone whose permit has been previously suspended or revoked shall pay the Department of Revenue, in addition to the required security specified in Reg-004.07A(1), a fee of twenty-five dollars (\$25.00) for the renewal or reissuance of a permit in the event of a first revocation, and fifty dollars (\$50.00) for each successive revocation. A new permit will not be issued to the same person until the Department of Revenue is satisfied that such person will comply with the sales and use tax statutes and regulations.

004.09 Anyone who engages in business as a retailer in this state without a permit or permits or after a permit has been suspended, and each officer of any corporation which so engages in business, shall be guilty of a misdemeanor. Upon conviction thereof, such person and each such officer shall be fined an amount not to exceed five hundred dollars (\$500.00) per each day of operation.

(Sections 77-2701.13 and 77-2713(3), R.R.S. 2003, and sections 77-2703(2), 77-2705, 77-27,131, R.S.Supp., 2008. February 22, 2009)

REG-1-005 RETAILERS AND SELLERS

005.01 Retailer means any seller and wherever either of these terms is used, it is construed to include the other. Retailer includes:

005.01A Any person engaged in the business of selling, leasing, or renting property or services whenever the receipts are subject to sales tax;

005.01B Any person engaged in the business of making sales at auction of tangible personal property for storage, use, or other consumption, or who is collecting the proceeds of an auction (Reg-1-034 Auction and Consignment Sales);

005.01C Any person who leases or rents tangible personal property to another for storage, use, or other consumption, except film rentals when sales tax is charged on the admission, and interchanged railroad rolling stock (Reg-1-018 Rent or Lease of Tangible Personal Property);

005.01D Any person who is renting or furnishing lodging for periods of less than 30 days, except a facility which is either licensed under the Health Care Facility Licensure Act of the Nebraska Revised Statutes, or operated by an educational institution established or recognized under Chapter 79 or 85 of the Nebraska Revised Statutes, when rooms are regularly used to house students for a consideration for periods in excess of 30 days (Reg-1-046, Hotels, Lodgings, and Accommodations);

005.01E Any person who is furnishing telephone, mobile telecommunications, telegraph, gas, electricity, sewer, or water service (Reg-1-065, Telecommunications Service, and Reg-1-066, Sewer and Water);

005.01F Any person who is furnishing community or county antenna television service or satellite programming service (Reg-1-081, Community or County Antenna Television Service);

005.01G Any person who is charging admissions, except admissions charged by elementary or secondary schools, public or private, or school districts, student organizations, or parent-teacher associations pursuant to an agreement with proper school authorities, or admissions to fund-raising events by ballot question committees, candidate committees, independent committees, and political party committees that are registered with the Political Accountability and Disclosure Commission or are for candidates for federal office (Reg-1-044, Admissions);

005.01H Any person who is renting or otherwise furnishing tangible personal property under an agreement requiring the periodic cleaning or laundering of such tangible personal property (Reg-1-049, Linen and Clothing Suppliers);

005.01I Any person who is selling or otherwise providing warranties, guarantees, service contracts, or maintenance agreements covering taxable property or services (Reg-1-074, Warranties and Guarantees);

005.01J Any person who is selling or otherwise providing computer software or computer software training, when provided by the retailer that sold the software (Reg-1-088 Computer Software);

005.01K Any contractor who has elected to be treated as a retailer, or any contractor who has failed to make an election (Reg-1-017, Contractors);

005.01L Any person who is selling live plants, other than as a part of the transfer of an improvement to real estate or the real estate (Reg-1-017, Contractors);

005.01M Any person who is the promoter, operator, or organizer of a fair, flea market, craft show, or similar event (Reg-1-033, Transient and Itinerant Sellers.)

005.01M(1) Retailer does not include any person making sales at a fair, flea market, craft show, or similar event when the licensed promoter, operator, or organizer has arranged to remit the sales tax on behalf of that person for the show.

005.01N Any person providing any of the following:

005.01N(1) Animal specialty services, except for veterinary services and specialty services performed on livestock (Reg-1-102, Animal Specialty Services);

005.01N(2) Building cleaning services (Reg-1-098, Building Cleaning);

005.01N(3) Digital audio works, digital audiovisual works, digital books, and digital codes;

005.01N(4) Installing and applying tangible personal property where the sale of the property is subject to tax (Reg-1-082, Labor Charges);

005.01N(5) Motor vehicle washing, waxing, towing, and painting services (Reg-1-099, Motor Vehicle Services);

005.01N(6) Pest control services (Reg-1-100, Pest Control Services);

005.01N(7) Recreational vehicle park services (Reg-1-103, Recreational Vehicle Park Services);

005.01N(8) Repairing or maintaining tangible personal property, except motor vehicles, where the sale of the property would be subject to tax (Reg-1-082, Labor Charges); and

005.01N(9) Security and detective services (Reg-1-101, Security and Detective Services.)

005.01O Option 1 contractors who install, construct, service, repair, replace, upgrade, or remove outlets, wire, cable, or any other property for telephone, telegraph, cable, satellite, or mobile telecommunications services on the customer's or service provider's side of the demarcation point (Reg-1-017, Contractors.)

005.01P Option 2 and Option 3 contractors who install, construct, service, repair, replace, upgrade, or remove outlets, wire, cable, or any other property for telephone, telegraph, cable, satellite, or mobile telecommunications services (Reg-1-017, Contractors):

005.01P(1) On the service provider's side of the demarcation point, or

005.01P(2) On the customer's side of the demarcation point when acting as a subcontractor for telephone, telegraph, cable, satellite, or mobile telecommunications service providers.

005.02 A distributor may enter into an agreement with the Department of Revenue to collect tax for representatives working for the distributor. The distributor must collect and remit tax from representatives on the sales price of each item sold at the tax rate imposed at the delivery location of each sale. When the distributor has entered into this agreement, the individual representatives are not required to hold their own sales tax permits.

005.03 A person does not have to be engaged solely in a retail business in order to be liable for collecting, reporting, and remitting the sales and use tax. Manufacturers, producers, or wholesalers are liable for collection of the tax to the extent that they make sales at retail or have gross receipts which are taxable. Sales are sales for resale only if a resale certificate is received from the purchaser. All other sales are presumed to be taxable.

005.04 Model 1 seller means a seller that has selected a certified service provider as its agent to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own retail purchases.

005.05 Model 2 seller means a seller that has selected a certified automated system to perform part of its sales and use tax functions but retains responsibility for remitting the tax.

005.06 Model 3 seller means a seller that has sales in at least five member states of the Streamlined Sales Tax Agreement, has total annual sales revenue of at least five hundred million dollars, has a proprietary system that calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the member states that establishes a tax performance standard for the seller.

(Sections 77-2701.16, 77-2701.21, 77-2701.22, 77-2701.23, 77-2701.31, 77-2701.32, and 77-2705, R.R.S 2009. June 6, 2011.)

REG-1-006 RETAIL SALE OR SALE AT RETAIL

006.01 Retail sale or sale at retail means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

006.01A Gross receipts from sales at retail in this state are taxable except as otherwise provided.

006.01B Retail sale includes the sale or exchange of property or services for property, for money, or for services. Retail sale includes every transaction constituting a sale, whether conditional, installment, credit, or otherwise. In general, retail sale or sale at retail includes all sales of tangible personal property, or of other items the gross receipts of which are taxable. (Reg-1-007, Gross Receipts).

006.02 The test of a sale at retail is whether or not the sale is to a purchaser for use or consumption and not for resale. Services are generally consumed by the purchaser and are only rarely purchased for resale. (See Reg-1-013, Sale for Resale, or Reg-1-023, Ingredient or Component Part).

006.03 The question of who makes the sale is immaterial. The controlling consideration is whether it is a sale to a final consumer or user and not for resale.

006.04 The location of the sale is generally where the purchaser or lessee takes delivery of the property or service.

006.04A The sale occurs in this state even if the buyer intends to take the property or service to another state.

006.04B Freight terms such as FOB shipping point or FOB destination, or declarations of the parties made after the completion of the transaction are not sufficient to show where the sale occurs.

006.05 If the location where the purchaser takes delivery of the property or service cannot be determined, the sale is taxed at the address for the purchaser according to the retailer's records.

006.06 If the retailer's records do not contain an address for the purchaser, an address obtained during the transaction, including from a payment document, may be used.

006.07 If the location of the sale cannot be determined under any of the above, the sale is taxed at the location from which the property was shipped, from which the digital goods or computer software was first available for transmission by the seller, or from which the service was provided.

006.08 The sale of utilities occurs where the meter is located or the connection is furnished.

006.09 A sale of a maintenance agreement with the covered property occurs where the property is delivered, or where the motor vehicle, trailer, semitrailer, or motorboat is registered.

006.09A A sale of a maintenance agreement separate from the covered property occurs at the location where the property being covered is normally used.

006.10 A sale occurs in another state when the seller is required by the terms of the sale to deliver the property or service to a point outside this state.

006.10A The Department of Revenue will assume that delivery is required when the item is so large or dangerous that it requires special handling, the seller normally provides the special handling, and the seller actually delivers the item in another state.

006.10B Acceptable proof of transportation outside this state is a waybill or bill of lading, an insurance or other receipt issued by the United States Postal Service, or a trip sheet signed by both the seller's delivery agent and the person who received the goods.

006.10C If the property or service is returned to Nebraska after delivery by the seller, it is taxable in Nebraska. The buyer must pay the use tax directly to the Department of Revenue.

006.11 The provisions of this regulation do not apply to motor vehicles, trailers, and semitrailers which are sold, rented, or leased for periods of one year or more; to motorboats which are sold, rented, or leased for periods of one year or more, or to sales of aircraft that do not qualify as transportation equipment as defined in Reg-1-019, Rental or Lease of Vehicles. See also Reg-1-020, Motor Vehicles, Reg-1-067, Aircraft and Related Services, and Reg-1-096, Motorboats, for the rules on these rentals and sales.

(Section 77-2701.31, R.R.S. 2003, and sections 77-2701.34, 77-2703(1)(g), and 77-2703.01, R.S.Supp., 2008. February 22, 2009)

REG-1-007 GROSS RECEIPTS DEFINED

007.01 Gross receipts means the total amount of the sale or lease or rental price of retail sales by retailers, valued in money, whether received in money or otherwise. Gross receipts includes the value of any property, services, commodities, or precious metals, including gold or silver coins, received. Gross receipts include:

007.01A The gross revenue received from the installation of, or from furnishing:

007.01A(1) Mobile telecommunications service that originates and terminates in the same state to a customer with a place of primary use in Nebraska,

007.01A(2) Ancillary services, except for conference bridging services, and

007.01A(3) Intrastate telephone communications services, except for value-added, nonvoice data service. (Reg-1-065, Telecommunications Services);

007.01B The gross revenue received from installing or furnishing intrastate telegraph service, (Reg-1-065, Telecommunications Services);

007.01C The gross revenue received from furnishing gas, electricity, sewer, and water service, (Reg-1-066, Sewer and Water);

007.01D The gross revenue received from installing or furnishing satellite services or community or county antenna television service, (Reg-1-081, Community or County Antenna Television Service);

007.01D(1) If any or all of the charge for installation is free to the customer and is paid by the satellite or community or county antenna television service provider to the installer, the tax must be paid and remitted by the service provider.

007.01E The gross revenue received from admissions, (Reg-1-044, Admissions);

007.01F The gross revenue received from the sale, lease, rental, installation, application, repair, or maintenance of property, including sales through vending machines to users or consumers, and sales for amounts so small that no tax is collected;

007.01G The gross revenue received from providing lodging for any period less than 30 days, (Reg-1-046, Hotels, Lodgings, and Accommodations);

007.01H The gross revenue received from the sale, lease, license, franchise or rental of intellectual or entertainment properties, including computer software, videotapes, and movie film, (Reg-1-045, Motion Picture Film and Videotape and Reg-1-088, Computer Software);

007.01I The gross revenue from charges for delivery or freight or for shipping and handling received by the retailer in conjunction with a taxable sale, (Reg-1-026, Finance, Carrying, Service, and Interest Charges and Reg-1-079, Delivery Charges);

007.01J The gross revenue received from the sale of maintenance agreements, service contracts, guarantees, or warranties, when the property covered or the services to be provided are taxable (Reg-1-074 Warranties and Guarantees);

007.01K The gross revenue received from computer software training provided by the retailer that sold the software, (Reg-1-088, Computer Software);

007.01L The gross revenue received from providing building cleaning services, (Reg-1-098, Building Cleaning and Maintenance);

007.01M The gross revenue received from providing pest control services, (Reg-1-100, Pest Control Services);

007.01N The gross revenue received from providing security or detective services, (Reg-1-101, Security and Detective Services);

007.01O The gross revenue received from providing recreational vehicle park services, (Reg-1-103, Recreational Vehicle Park Services);

007.01P The gross revenue received from providing motor vehicle washing, waxing, towing, and painting, (Reg-1-099, Motor Vehicle Services);

007.01Q The gross revenue received from bundled transactions when one or more of the products included in the bundle are taxable, (Reg- 1-108, Bundled Transactions);

007.01R The gross revenue received from providing animal specialty services, (Reg-1-102, Animal Specialty Services);

007.01S The gross revenue received from membership fees paid to access the retailer's premises or to receive discounts where the sales made on the premises or to which the discounts apply are subject to tax; and

007.01T The total amount of the sale without deduction for:

007.01T(1) The cost of materials used, labor or service costs, interest paid, losses, or any other expense;

007.01T(2) The cost of transportation of property;

007.01T(3) The amount charged for warranties, guaranties, service contracts, or maintenance agreements;

007.01T(4) Cash rebates or refunds paid by the manufacturer to either the retailer or the purchaser, For rebates on motor vehicles, see Reg-1-020, Motor Vehicles ;

007.01T(5) The amount paid for any occupation taxes, import duties, manufacturer's excise taxes, or property taxes levied against the property;

007.01T(6) The cost of any license, franchise, or lease of computer software or entertainment properties such as videotapes or movie films; and

007.01T(7) Any charge required to be paid in connection with the purchase, lease, or rental of property subject to tax.

007.02 Gross receipts does not include the following:

007.02A Discounts allowed and taken on sales, (Reg-1-024, Cash Discounts);

007.02B If property is returned by the purchaser, that portion of the sales price refunded to the customer either in cash or credit, (Reg-1-025, Returned Articles);

007.02C Charges for financing, carrying charges, service charges, and interest charges for credit sales, (Reg-1-026, Finance, Carrying, Service, and Interest Charges);

007.02D The value of property accepted as partial consideration on the retail sale of other similar property, (Reg-1-029, Trade-ins or Exchanges);

007.02E The amount collected for the federal luxury excise taxes on consumers; and

007.02F The amount charged for the federal retail tax on heavy trucks, trailers, and tractors.

(Sections 77-2701.16, 77-2701.27, 77-2701.48, 77-2701.49, 77-2701.50, 77-2701.51, 77-2701.52, 77-2701.53, and 77-2703, R.R.S, 2009. November 6, 2010.)

REG-1-008 RECORDS

008.01 Retailers are Required to Keep Records. Every retailer is required to keep records necessary to determine the amount of tax due. These records must include the normal books of account ordinarily maintained by the average prudent businessperson engaged in a similar activity, together with all documents supporting entries in the books of account. Schedules and working papers used in preparing tax returns must also be retained.

008.01A Every retailer must keep exempt sale certificates, resale certificates, energy source exemption certificates, or other adequate proof to support a tax exemption for any sales. The retailer must keep all documentation necessary to support deductions from gross receipts on the tax return.

008.01B Model 1, 2, and 3 sellers may maintain records in accordance with the Streamlined Sales and Use Tax Agreement.

008.02 The records created at the time of sale may be sales slips, sales invoices, guest checks, tally sheets, itemized lists, or other memoranda. A cash register tape may be acceptable if it preserves sufficient information.

008.02A Property may be described by a symbol if the symbol is representative of a class of merchandise or services which are always taxable or tax exempt. If a retailer sells only tax exempt merchandise in a "Department P," a description of this merchandise as "Department P" is sufficient if the retailer uses that symbol consistently to describe the same merchandise.

008.02B However, if a retailer sells several types of merchandise, both taxable and tax exempt, in a single department, his or her records must individually identify the types of merchandise which are tax exempt.

008.03 When Tax is Commingled with Receipts. A retailer who maintains records where the amount of tax collected is commingled with the receipts from the sale may determine taxable receipts in the following manner:

008.03A The receipts from any sales which are specifically exempt or otherwise excluded from sales tax are subtracted from total receipts. The remainder represents the receipts from the taxable sales plus the tax collected, and

008.03B The remainder is divided by one plus the rate of tax in effect.

008.04 Records Required to Determine Use Tax. Every person storing, using, or otherwise consuming property in Nebraska must keep receipts, invoices, and other pertinent records necessary to establish the amount of tax for which the person is liable. Any person having

information relating to taxable sales of property in the person's possession or custody, may be required at any time to submit the names and addresses of the purchasers, the sales price of the property, and the date of the sale.

008.05 Right to Examine Records. The Tax Commissioner or any person authorized in writing by the Tax Commissioner may examine the books, papers, records, electronic media, or equipment of any person to ascertain or verify the accuracy of any return filed; or, if no return is filed by the person, to ascertain and determine the amount required to be paid. The right to examine books, papers, records, electronic media, and equipment of any person includes, but is not limited to, the right to request and retain paper or electronic copies of the books, papers, records, and media.

008.06 Administrative Subpoenas. The Tax Commissioner may require persons undergoing an audit, examination, or review to provide records that are necessary to make a proper determination of the person's compliance with, or the amount due under, the laws of this state. If warranted, the Tax Commissioner may issue an administrative subpoena.

008.06A An administrative subpoena must clearly state the scope of the demand for records and any other requirements and state when, where, and how to comply with the administrative subpoena.

008.06B An administrative subpoena may be enforced by the Attorney General, acting on behalf of the Tax Commissioner, in an action filed in the District Court of Lancaster County.

008.07 Records must be retained for a minimum of three years after the return is filed, or while any refund claim or petition for redetermination of a deficiency determination is pending, unless the Nebraska Department of Revenue (Department) authorizes their destruction in writing at an earlier date. However, the Department may issue a deficiency determination within six years after any amount of tax is determined due and payable when a properly completed return has not been filed or the amount of the deficiency exceeds 25% of the amount stated on the return.

008.08 When records are missing, all gross receipts are presumed to be taxable, or the Department may estimate a person's liability for tax based on the best available records. The person required to keep the records has the burden to show that the gross receipts are not taxable or that the estimate is incorrect.

(Neb. Rev. Stat. §§ 77-366, 77-375, 77-376, 77-377, 77-2705(7), 77-2709, and 77-2711. June 24, 2017.)

REG-1-009 ACCOUNTING METHODS

009.01 Gross sales must be reported in accordance with the method of accounting regularly employed in keeping the books of the particular taxpayer. Retailers may use either the cash basis, accrual basis, or any other generally recognized accounting basis which correctly reflects the operation of the business. When a basis of accounting has been adopted for reporting sales tax, the retailer may not change that basis of accounting without prior permission from the Department of Revenue.

009.02 Retailers maintaining their regular books and records on the cash basis shall make returns on the basis of cash received during the period, provided this basis clearly reflects the operation of the business.

009.03 Retailers maintaining their regular books and records on the accrual basis, or any other basis of accounting recognized under generally accepted accounting principles, shall make returns on that basis and shall report all sales recorded during the period on the corresponding Nebraska and Local Sales and Use Tax Return, Form 10.

009.04 As is explained in Reg-1-016, Changes in Rate of Tax, the basis on which returns are required to be made shall also serve as the basis for determining the rate at which the tax is to be collected by the retailer from the purchaser.

009.05 Retailers maintaining their books and records on the accrual basis, may elect to defer remittance of sales tax not yet collected on credit, conditional, and installment sales. If such election is made, it shall be pursuant to the following conditions:

009.05A The election must be submitted in writing to the Nebraska Department of Revenue prior to the retailer's change in reporting,

009.05B Such election shall become effective the first day of the month following the month the notice of election is received by the Department; provided, such notice is postmarked no later than the 15th day of the month. Elections postmarked after the 15th day of the month shall become effective the first day of the next succeeding month (i.e., election notice postmarked September 10, effective date of election, October 1; election notice postmarked September 17, effective date of election, November 1.)

009.05C The election will be acknowledged by the Department; such acknowledgment is to be maintained with the retailer's records.

009.05D This option is available only to retailers who finance their own sales or discount them to a qualified subsidiary corporation.

009.05D(1) Retailers who accept bank or similar credit cards or who discount their credit sales to a third party, may not defer the sales tax remittance on these sales. However, retailers who both carry their own credit and discount some credit sales to a third party, may defer the sales tax remittance on that portion of credit sales carried by the retailer.

009.05D(2) Retailers who discount their credit sales to a subsidiary corporation may elect to defer the sales tax until the subsidiary receives payment on the account. If the subsidiary corporation does not obtain a Nebraska sales tax permit, the retailer must obtain a surety bond in favor of the State of Nebraska in an amount not less than two (2) times the amount of sales tax payable on outstanding Nebraska accounts receivable held by the subsidiary as of the end of the prior calendar year. The Nebraska Department of Revenue will provide the necessary information and bond conditions upon written request. Each retailer maintaining a surety bond, shall review the amount of each bond at the close of each calendar year, adjusting same to reflect the minimum bond requirement.

009.05D(3) Failure of the subsidiary to maintain a sales tax permit, or of the retailer to maintain a bond in the required amount shall result in all sales tax not previously remitted on recorded sales becoming due and payable. The tax must be paid by the next required sales tax return filing date.

009.05E Once in effect, this election shall remain in force for a period of not less than one (1) year from the date the election becomes effective.

009.05F Retailers who wish to discontinue remitting under this option and remit sales tax in accordance with paragraph 009.03, are required to notify the Department. Payment of all deferred sales taxes will be remitted on their next required sales tax filing date corresponding to the tax period within which the notice is received by the Department. Should a retailer discontinue business while under this option, all deferred sales taxes must be remitted on its final sales tax return.

009.05G For retailers deferring sales tax remittances, the amount of tax due on a sale is determined by the sales tax rate in effect at the time the sale is recorded.

009.05H Retailers deferring sales tax remittances under this option do not qualify for the bad debt deduction as sales tax is remitted after the receipt of payment.(Reg-1-028, Bad Debts)

(Section 77-2701.10, 77-2703(1), and 77-2708(1)(b)(iv), R.S.Supp., 2008. February 22, 2009.)

REG-1-010 THE SALES AND USE TAX RETURN

010.01 A retailer must file a return for each reporting period or portion of a reporting period. The return must be filed for every tax reporting period even if there have been no sales.

010.02 The filing frequency is the reporting period assigned by the Nebraska Department of Revenue (Department). Except as provided below, annual returns are required if the retailer's yearly tax liability is less than \$900, quarterly returns are required if the yearly tax liability is \$900 or more and less than \$3,000, and monthly returns are required if the yearly tax liability is \$3,000 or more.

010.02A Sellers who are Model 1, 2, or 3 sellers may follow the filing frequency guidelines outlined in the Streamlined Sales Tax Agreement (SSUTA).

010.02B Sellers who are registered under the SSUTA, but do not have a legal requirement to register in the state, and who are not Model 1, 2, or 3 sellers, may follow the filing frequency guidelines outlined in the SSUTA.

010.02C Retailers who have not obtained a permit or been assigned a filing frequency have a monthly filing frequency.

010.02D The Tax Commissioner has discretion to assign an annual return for seasonal retailers, even if the yearly tax liability exceeds the amounts listed in Reg-1-010.02.

010.03 Retailers must report and account for gross receipts.

010.03A The return includes both a sales tax return and a use tax return. Unless there are amounts, words, statements, numbers, zeros, or figures shown on the appropriate lines of a paper Nebraska and Local Sales and Use Tax Return, Form 10, mailing the form to the Department does not constitute the filing of either or both returns.

010.03A(1) If the retailer files a return, the statute of limitations for issuing a deficiency determination is three years after the last day of the month following the reporting period, or three years after the return was filed, whichever is later. If the retailer fails to file a return, the statute of limitations for issuing a deficiency determination is five years after the last day of the month following the reporting period.

010.03A(2) If the retailer does not enter amounts, words, statements, numbers, zeros, or figures on a paper Nebraska and Local Sales and Use Tax Return, Form 10, the statute of limitations for issuing a deficiency determination for that reporting period is extended beyond three years to five years. This extension of the statute of limitations does not apply to returns that are electronically filed.

010.03A(3) Statements by the retailer that no sales were made or no tax is due, or entries made by the Department to the account of the retailer indicating that no tax is due, do not constitute the filing of either or both returns and does not limit the statute of limitations to three years.

010.03B The return must be filed within 20 days following the end of the reporting period. The retailer is entitled to deduct and withhold a collection fee from the amount of sales tax which otherwise would be due. No fee may be deducted for reporting use tax or tax remitted pursuant to a direct payment permit.

010.03C The Tax Commissioner will accept the format for filing and payment methods allowed pursuant to the SSUTA.

010.03D The Tax Commissioner may require some or all taxpayers to file returns and remit payments electronically.

010.04 Unless otherwise provided in the SSUTA, the Tax Commissioner may require that returns be signed by the person required to file the return or by his or her duly authorized agent.

010.05 Returns that are not filed electronically must be properly signed.

010.06 The return and the remittance are considered timely filed if received, delivered, or mailed, postage prepaid, on or before the 20th day of the month following the close of the reporting period. When the last day falls on a Saturday, Sunday, or an approved holiday, the return is considered timely filed if received, delivered, or mailed, postage prepaid, on the next day which is not a Saturday, Sunday, or an approved holiday.

010.06A A United States Postal Service postmark is conclusive evidence of the date of mailing for the purpose of timely filing a return.

010.06B A private postage meter date or a date stamped by a private delivery service will be considered the date of mailing if the date of the stamp is no more than four days before the date the return is received by the Department, excluding Saturdays, Sundays, or approved holidays. If the date of the stamp is more than four days before the date the return is received by the Department, the return is considered filed on the date received.

010.06C Failure to file the return or to remit the tax due by the due date will subject the taxpayer to a penalty equal to 10% of the unpaid tax or \$25.00, whichever is greater. Interest is imposed at the rate specified in Neb. Rev. Stat. § 45-104.02 from the due date to the date payment is received.

010.07 Remittance must be in the form of a electronic funds transfer, check, credit card, draft, money order, or other payment method as approved by the Tax Commissioner, made payable to the Nebraska Department of Revenue. Cash, post-dated checks, or postage stamps cannot be sent as payment. Cash may be used when payment is made in person at an office of the Department.

010.08 If any understatement on a return is a result of fraud or an intent to evade the sales or use tax, a penalty of 25% of the amount of the understatement or \$50, whichever is greater, may be assessed.

010.09 Criminal Penalties.

010.09A Any person required to collect, account for, or pay over any sales or use taxes who willfully fails to collect, truthfully account for, or pay over these taxes is guilty of a Class IV felony.

010.09B Any person who willfully attempts in any manner to evade any sales or use taxes is guilty of a Class IV felony.

010.09C Any person who willfully assists in or advises in preparing or filing a false or fraudulent return, is guilty of a Class IV felony, whether or not the falsity or fraud is with the knowledge or consent of the person authorized or required to file the return.

(Neb. Rev. Stat. §§ 77-1784, 77-2705.01, 77-2708(1), 77-2709, 77-2712.05, 77-2713, and 77-27,125, and McDonald's Executive Offices v. Nebraska Department of Revenue, 243 Neb. 82 (1993). July 3, 2013.)

REG-1-011 BRACKET SYSTEM FOR ADDING AND COLLECTING SALES TAX

011.01 A bracket system correlating sales price to the appropriate sales or use tax charge may be used by the seller. Copies of the bracket schedule established by the Department of Revenue are available upon request.

011.02 The sales or use tax liability may be computed by multiplying the sales price by the applicable tax rate in effect. All persons using machine or computer billing are authorized by the Department of Revenue to use a straight percentage basis of calculating the tax on such billings. If the calculation of the tax results in a fraction of a cent, the tax liability should be carried to the third decimal place and rounded to the nearest whole cent. If the third decimal place is four or less, round down and if the third decimal place is greater than four, round up.

011.03 Although retail sales may be made on which no tax is collected because of the size of the sale, e.g., a 10-cent sale, the receipts from such sales are included in taxable sales on which the retailer must compute and remit the tax.

011.04 When more than one item is purchased, the tax may be computed on the total amount of the combined taxable purchases or on the individual items. However, when the tax is allowed to be included in the amount of the purchase, the tax is computed on each item separately, rather than on the total of all purchases.

(Section 77-3,117, R.R.S. 2003, and section 77-2703(1)(d), R.S.Supp., 2004. April 12, 2005.)

REG-1-012 EXEMPTIONS

012.01 Certain transactions are exempt from sales and use taxes. Transactions may be exempt because of:

012.01A The seller (entity-based exemption);

012.01B The item sold (product-based exemption);

012.01C The buyer (entity-based exemption);

012.01D The buyer's intended use of the item (use-based exemption); or

012.01E A combination of two or more of these characteristics.

012.02 There is no single, comprehensive list of transactions, items, entities, and uses that are exempt from sales and use taxes. Each transaction must be evaluated individually to determine if an exemption applies. Refer to the website of the Nebraska Department of Revenue (www.revenue.nebraska.gov) for a list of most exemptions and separate regulations that define, explain, and describe limitations on the exemptions.

(Neb. Rev. Stat. § 77-2712.05(3). June 24, 2017.)

REG-1-013 SALE FOR RESALE — RESALE CERTIFICATE

013.01 A sale for resale is a sale of property (services) to any purchaser for the purpose of resale in the normal course of the purchaser's business. The property may be resold either in the form or condition in which it was purchased, or as an ingredient or component part of other property. (Reg-1-023, Component Parts--Manufacturing, Processing, and Fabrication) A sale for resale includes a sale of property to a purchaser for the sole purpose of leasing or renting the property to others, if the lease or rental payments are at a fair market value.

013.01A Fair market value is the price at which property would change hands between a willing buyer and a willing seller, neither having to buy or sell, and both having reasonable knowledge of all the necessary facts.

013.01B A sale for resale does not include the sale of property to a purchaser whose subsequent lease or rental of that property is incidental to the lease or rental of real estate.

013.02 The burden of proving that a sale of property is not a sale at retail is on the retailer (seller) unless the retailer accepts a properly completed resale certificate or obtains the relevant data elements showing that the property is purchased for the purpose of reselling, leasing, or renting in the regular course of the purchaser's business or is to be used as an ingredient or component part of other property to be sold, leased, or rented. The resale certificate is a part of the retailer's records and must be retained in the same manner as other sales tax records.

013.03 A properly completed resale certificate received from the purchaser is proof for the retailer that the sale was for resale.

013.03A To be properly completed, a resale certificate received before, in conjunction with, or within 90 days after the time of the sale must be fully completed as provided in subdivisions 013.03B(1) through 013.03B(4). A resale certificate received within 120 days after a request for substantiation made by the Department of Revenue (Department) must be both fully completed and accepted in good faith to be properly completed.

013.03B To be fully completed, the resale certificate must include all of the following:

013.03B(1) Identification of both the purchaser and the retailer including the type of business engaged in by the purchaser, and the reason for the exemption;

013.03B(2) The sales tax permit number of the purchaser. If the purchaser is licensed as a retailer in Nebraska or another state which requires a permit, the resale certificate must include the sales tax permit number. If the purchaser has no sales tax permit number, the resale certificate must state the reason the purchaser has no sales tax permit number;

013.03B(3) If a paper resale certificate is used, an authorized signature. In other cases, another form of authorization as allowed by the Streamlined Sales and Use Tax Agreement (SSUTA); and

013.03B(4) The date of issuance.

013.04 If a purchaser who gives a resale certificate makes any use of the property other than retention, demonstration, or display while holding it for sale, lease, or rental in the regular course of business, this use removes it from the “sale for resale” exemption category and the use is taxable to the purchaser at the time the property is first used for a purpose other than resale. Except for a purchaser of aircraft as provided in Reg-1-067, Aircraft and Related Services, the sales price of the property is the measure of the tax base. (See Reg-1-035, Consumption of Untaxed Property)

013.05 The retailer or certified service provider (CSP) holding a properly completed resale certificate is relieved from liability for tax, penalty, and interest. However, retailers or CSPs who fraudulently fail to collect tax or who solicit purchasers to participate in unlawful claims of exemption are liable for the tax not collected, and any penalty and interest.

013.06 A retailer or CSP who has a recurring business relationship with the purchaser is not required to obtain a separate resale certificate for each sale, but may accept a “blanket” resale certificate covering future sales. A recurring business relationship exists when sales occur at least once every 12 months.

013.07 Sales where the retailer is required to make delivery outside of Nebraska need not be supported by resale certificates if the sales are supported by bills of lading, certificates of out-of-state delivery, or other documentation. However, where delivery to the out-of-state purchaser, or an agent of the purchaser, occurs in this state, sales tax must be collected unless the sale is otherwise exempt, in which case the retailer may accept a properly completed resale or exempt sale certificate.

013.08 If a resale certificate or satisfactory evidence of the data elements in support of a claim that a sale is exempt cannot be produced for the Department within the time frames noted below, the retailer making the sale is responsible for the tax on the transaction.

013.08A Retailers or CSPs are relieved from liability for the tax if a properly completed resale certificate is received or if the retailer or CSP otherwise obtains the relevant data elements supporting the exemption, prior to, in conjunction with, or within 90 days after the date of the sale.

013.08B Retailers or CSPs are relieved from liability for the tax if a properly completed resale certificate is accepted in good faith, or if the retailer or CSP otherwise obtains the relevant data elements supporting the exemption, within 120 days after a request for substantiation made by the Department.

013.08C Retailers or CSPs may only accept a fully completed resale certificate under subsection 013.08B of this section with a good faith belief that the purchase is a valid sale for resale to be relieved from liability. If the resale certificate is not received in good faith, the retailer or CSP is liable for the tax not collected, and any penalty and interest.

013.09 Any purchaser, or agent of the purchaser, who issues a resale certificate to the retailer for any purchase taxable under the Nebraska Revenue Act, which is purchased for a use other than resale, lease, or rental in the regular course of the purchaser’s business, is subject to a penalty of

\$100 or ten times the tax, whichever is larger, for each instance of presentation and misuse. With regard to a blanket resale certificate, the penalty applies to each purchase made during the period the blanket certificate is in effect.

013.10 Any purchaser, or agent of the purchaser, who fraudulently signs a resale certificate with intent to avoid payment of the tax may, in addition to the penalty set out in section 013.09, be found guilty of a Class IV misdemeanor.

013.11 The Department will recognize only the Nebraska Resale or Exempt Sale Certificate, Form 13, a previously approved paper or electronic substitute for this Form 13, the Multistate Tax Commission Uniform Sales and Use Tax Certificate, or a certificate of exemption authorized by the SSUTA.

013.12 Retailers must maintain records of resale transactions. The Department may make and retain copies of any resale certificates.

(Sections 77-2701.34, 77-2703(1)(f), 77-2706(1), (2), (3), and (4), 77-2706.01, and 77-2711(4), R.R.S. 2009. November 6, 2010.)

REG-1-014 EXEMPT SALE CERTIFICATE

014.01 Certain sales, leases, or rentals, and the storage, use, or other consumption of property (services) are not taxable. Exempt transactions may be divided into four groups. The four groups are transactions that are exempt due to the characteristics of:

014.01A The retailer (seller) (entity-based exemption);

014.01B The property sold (product-based exemption);

014.01C The buyer (entity-based exemption); and

014.01D The buyer's intended use of the item (use-based exemption).

Transactions described in subsections 014.01A and 014.01B do not need to be supported by exempt sale certificates, provided the retailer's records clearly show the nature of the retailer and the property being sold. A purchaser making a purchase that is exempt because it is an occasional sale is required to obtain an exempt sale certificate or other documentation from the retailer that the sale was exempt.

Transactions described in subsections 014.01C and 014.01D must be supported by exempt sale certificates or other suitable documentation. (See Reg-1-012, Exemptions)

014.02 The burden of proving that any sale of property is not taxable is on the retailer and sufficient records must be kept which reveal the nature of each exempt sale. A retailer must obtain an exempt sale certificate or obtain the relevant data elements from the purchaser in support of the claim that the sale is exempt. The exempt sale certificate is a part of the retailer's records and must be retained in the same manner as other sales tax records.

014.03 Exemption numbers in the form of numbered certificates of exemption are issued by the Nebraska Department of Revenue (Department) and must be provided by nonprofit organizations, public schools, and common or contract carriers when making exempt purchases. (See Reg-1-069, Common and Contract Carrier Vehicles, Reg-1-090, Nonprofit Organizations, and Reg-1-092, Educational Institutions)

014.04 The following organizations are not issued numbered certificates of exemption by the Department: The United States government, its agencies, and corporations wholly owned by the United States government; the state, its agencies, and political subdivisions, other than public schools. Purchases by many Nebraska political subdivisions, all other states, and all political subdivisions of other states are taxable except for purchases of industrial machinery and equipment, including repair parts, where the other state grants a reciprocal exemption for Nebraska or its political subdivisions.

014.05 A properly completed exempt sale certificate received from the purchaser is adequate proof for the retailer that the sale was exempt from the sales and use tax.

014.05A To be properly completed, an exempt sale certificate received before, in conjunction with, or within 90 days after the time of the sale must be fully completed as provided in

subdivisions 014.05B(1) through 014.05B(5). An exempt sale certificate received within 120 days after a request for substantiation made by the Department must be both fully completed and accepted in good faith to be properly completed.

014.05B To be fully completed, the exemption certificate must include all of the following:

014.05B(1) Identification of both purchaser and retailer;

014.05B(2) A statement of the basis for exemption, including the type of activity engaged in by the purchaser;

014.05B(3) A statement that the certificate is for a single purchase or is a blanket certificate covering future sales;

014.05B(4) If a paper certificate is provided, an authorized signature. In other cases, another form of authorization as allowed by the Streamlined Sales and Use Tax Agreement (SSUTA); and

014.05B(5) The date of issuance.

014.06 The retailer or certified service provider (CSP) holding a properly completed exempt sale certificate is relieved from liability for tax, penalty, and interest. However, retailers or CSPs who fraudulently fail to collect tax or who solicit purchasers to participate in unlawful claims of exemption are liable for the tax not collected, and any penalty and interest.

014.07 A retailer or CSP who has a recurring business relationship with the same purchaser is not required to obtain a separate exempt sale certificate for each sale but may accept a “blanket” certificate covering future sales. A recurring business relationship exists when sales occur at least once every 12 months.

014.08 If an exempt sale certificate or satisfactory evidence in support of a claim that a sale is exempt cannot be provided to the Department within the time frames noted below, the retailer making the sale is responsible for the tax on the transaction.

014.08A Retailers or CSPs are relieved from liability for tax if a properly completed exemption certificate is received, or if the retailer or CSP otherwise obtains the relevant data elements supporting the exemption, prior to, in conjunction with, or within 90 days after the date of the sale.

014.08B Retailers or CSPs are relieved from liability for the tax if a properly completed exemption certificate is accepted in good faith, or if the retailer or CSP otherwise obtains the relevant data elements supporting the exemption in good faith, within 120 days after a request for substantiation made by the Department.

014.08C Retailers or CSPs may only accept a fully completed exemption certificate under subsection 014.08B of this section with a good faith belief that the purchase is a valid exempt sale to be relieved from liability. If the exemption certificate is not received in good faith, the retailer or CSP is liable for the tax not collected, and any penalty and interest.

014.09 Any purchaser, or agent of the purchaser, who issues an exempt sale certificate to the retailer for any purchase which is not exempt from sales and use tax under the Nebraska Revenue Act, is subject to a penalty of \$100 or ten times the tax, whichever is larger, for each instance of presentation and misuse. With regard to a blanket exempt sale certificate, the penalty applies to each purchase made during the period the blanket certificate is in effect.

014.10 Any purchaser, or agent of the purchaser, who fraudulently signs an exempt sale certificate with intent to avoid payment of the tax may, in addition to the penalty set out in section 014.09, be found guilty of a Class IV misdemeanor.

014.11 The Department will recognize only the Nebraska Resale or Exempt Sale Certificate, Form 13, a previously approved paper or electronic substitute, a Nebraska Energy Source Exemption Certificate, Form 13E, a Nebraska Certificate of Exemption for Mobility Enhancing Equipment, Form 13ME, or a certificate of exemption authorized by the SSUTA for all sales except sales to the federal government. Sales to the federal government, or an agency or wholly owned corporation of the federal government, may be supported in either of two ways. First, the exemption may be supported by a regular federal certificate of exemption form. An alternative procedure is maintaining purchase documentation clearly identifying the purchaser as the federal government, or an agency or wholly owned corporation of the federal government. The best documents available are those which show payment was made by a United States Treasury Department warrant. (Reg-1-072, United States Government and Federal Corporations)

014.12 Retailers must maintain records of exempt transactions. The Department may make and retain copies of any exempt sale certificate.

(Sections 77-2703(1)(f), 77-2705(7) and (8), 77-2706, 77-2711(3)(a) and (4), and 77- 2713(5), R.R.S. 2009. November 6, 2010.)

REG-1-015 COMMON AND CONTRACT CARRIERS (MULTISTATE OPERATIONS) - TAX DEFERRAL

015.01 Any person, firm, or corporation operating as a common or contract carrier engaged in multistate operations, may apply to the Nebraska Department of Revenue for special permission to defer the incidence of the sales and use tax on certain purchases within or without this state, where the item purchased is first stored here for subsequent use in multistate operations, and at the time of purchase, the final location of the use of the item is unknown. The special permission referred to in this regulation is not related to the common and contract carrier exemption referred to in Reg-1-069, Common and Contract Carrier Vehicles.

015.02 Upon receipt of a request for permission to defer taxes, an investigation will be made to determine whether the applicant maintains satisfactory records to show where the purchased property is actually used. Such request must be written and be accompanied by a \$10.00 fee. If a favorable report results from the investigation, the Nebraska Department of Revenue will issue a special permission letter to the respective common or contract carrier. This special permission letter is issued in the form of a certificate of exemption. The common or contract carrier receiving the letter should furnish a copy of the letter to those vendors from whom purchases are made where use is unknown at the time of purchase in order that sales or use tax will be excluded from such purchases. Such letter shall not be used when purchases are made which knowingly have been or will be used or consumed within this state.

015.03 A retailer (seller) repeatedly making the same type of exempt sale to common or contract carriers need not take a separate copy of the special permission letter for each sale but may, at his or her risk, take a blanket certificate covering all future sales. If the Nebraska Department of Revenue determines that any such sale was not exempt, the retailer (seller) shall be liable for the tax, penalty, and interest. If a single special permission letter is taken, identification of the common or contract carrier must appear upon the memoranda created at the time of sale.

015.04 When items that were purchased tax exempt are later used in this state by the common or contract carrier, use tax is due at the applicable rate in effect at the time of use. This liability must be reported on the appropriate return to be filed for the period corresponding to the month of use.

(Section 77-2706(6), R.R.S. 1943.January 24, 1993.)

REG-1-016 CHANGES IN RATE OF TAX

016.01 The rate at which the sales and use tax is imposed is subject to change or the base may be altered by legislation which extends the tax to transactions previously not taxed. The purpose of this regulation is to set out the manner in which such occurrences will affect the tax on sales and purchases made where pre-existing contracts or obligations are involved so that retailers and consumers alike can take note of possible increases for which they may become liable.

016.02 For sales, leases, or rentals, the sales tax is imposed and shall be collected and remitted by the retailer at the rate in effect at the time the gross receipts are recorded as sales under the accounting method used by the retailer to maintain his or her books and records. A lease or rental agreement which extends through a tax rate change, will recognize the changed tax rate on payments recorded on or after the rate change. (Reg-1-009, Accounting Methods.)

016.02A For the rental or lease of a motor vehicle, the sales tax is imposed at the rate in effect at the time of the delivery of the motor vehicle regardless of changes in the rate during the term of the lease.

016.03 If the use tax is not required to be remitted at the time of purchase, the applicable use tax rate is that rate in effect at the time of use according to the accounting basis used to maintain the taxpayer's books and records.

016.04 The retailer on a cash basis of accounting will collect and report the tax at the rate in effect at the time he or she receives a payment without regard to whether the payment is in satisfaction of an obligation predating a change in the rate. The retailer using an accrual basis of accounting will collect and report the tax at the rate in effect at the time he or she records the sale.

016.05 Persons providing services covering a period starting before, and ending after, the effective date of a rate change will bill tax as follows: (a) for a rate increase, the change will apply to the first billing period starting on or after the effective date of the change; and (b) for a rate decrease, the change will apply to bills rendered on or after the effective date of the change.

016.06 When construction contractors operating under either Option 2 or Option 3 purchase construction materials to be consumed by them, they are obligated to pay the tax on the same basis as other consumers without regard to whether the purchase of such materials is for use in completion of a construction contract executed prior to a change in the rate. However, when a written contract exists for a fixed-price construction, reconstruction, alteration, or improvement project and the sales tax rate is increased during the term of that fixed-price contract, the contractor may apply for a refund of the increased sales tax; provided, such refund amount exceeds ten dollars (\$10.00). The contractor must submit a copy of the contract and any other evidence necessary to establish his or her entitlement to the refund.

016.06A In the event that the sales tax rate is decreased during the term of the fixed-price contract, the contractor shall pay to the Department of Revenue the difference between the decreased tax rate and the tax rate in effect prior to the decrease; provided, the amount of such

payment exceeds ten dollars (\$10.00). This procedure results in the contractor's final sales tax liability on fixed-price written contracts, to equal the rate in effect at the time the contract was entered into.

016.07 For fixed-price contracts in which the contractor labor is taxable and which were in progress on October 1, 2007, the date on which such contractor labor became exempt, the taxpayer shall pay to the Department of Revenue the difference between the decreased tax collected and the tax that would have been due on the contractor labor prior to the change; provided, the amount of such payment exceeds ten dollars (\$10.00). Failure to make the required payment constitutes a criminal act.

(Section 77-2701.03, R.R.S. 2003, and sections 77-2703(1) and (2), 77-2704.32, and 77-2704.33, R.S.Supp., 2008. February 22, 2009.)

REG-1-017 CONTRACTORS

017.01 Gross receipts from construction projects or the repair of real estate or fixtures are generally exempt from sales or use tax, except as otherwise stated in this regulation. In most cases, sales or purchases of building materials are taxable.

017.02 The following definitions will be used for all regulations in Title 316, Chapter 1.

017.02A Annexed means attached to real estate so that: (1) the property becomes real estate; or (2) the installation or removal of the property requires specialized skills or tools and is performed or supervised by a recognized trade professional.

017.02B Building means any free-standing structure enclosed within a roof and exterior walls. It does not have to be enclosed on all sides. It is designed for the housing, shelter, enclosure, and support of individuals, animals, manufacturing, or property of any kind. It must be annexed to the land.

017.02B(1) A building includes manufactured housing that is either set up for occupancy as a dwelling according to local building codes, or that is permanently annexed to real estate. (See Reg-1-018, Rent or Lease of Tangible Personal Property.)

017.02C Building materials mean any property, including fixtures, that will be annexed to the land or an improvement on the land. Building materials do not include tools, supplies, or any items that will not be annexed.

017.02D Contractor means any person who repairs property annexed to, or who annexes property to, real estate, including leased property, by attaching building materials to the annexed property or improvement being built or repaired, or who arranges for annexation of property.

017.02E Demarcation point means the point at which the wire or cable that is owned and maintained by a telephone or cable company is connected to the inside station wiring owned by and dedicated to the customer's use.

017.02F Fixture means a piece of equipment that must be annexed to the building or structure in order to properly function, yet remains identifiable as a separate item. Examples are central air conditioners, water heaters, garbage disposals, built-in dishwashers, and furnaces.

017.02G Live plants means and includes trees, shrubs, flowers, and sod. Live plants do not include seeds.

017.02H Option 1 contractor means a contractor who has elected to be taxed as a retailer of building materials with a tax-exempt inventory or a contractor who has not made an election. See section 017.05 of this regulation.

017.02I Option 2 contractor means a contractor who has elected to be taxed as the consumer of building materials with a tax-paid inventory. See section 017.06 of this regulation.

017.02J Option 3 contractor means a contractor who has elected to be taxed as the consumer of building materials with a tax-free inventory. See section 017.07 of this regulation.

017.02K Recognized trade professional means any person required to be licensed to practice his or her trade, such as a plumber or electrician.

017.02L Supplies mean items consumed or used during construction that do not become a part of the building or structure.

017.02M Structure means any construction composed of building materials arranged and fitted together in some way and annexed to land, such as a bridge, highway, street light, dam, television tower, fence, sewer, water line, or billboard.

017.03 Contractors may choose how they want to treat building materials for tax purposes. There are three options available to the contractor for the taxation of building materials. The choice of an option is made by the Nebraska Department of Labor's online Contractor/Subcontractor Registration Application located at www.dol.nebraska.gov. The contractor/subcontractor registration information, including the contractor option elected, is displayed in the Contractor Registration Database. Before performing any construction work in Nebraska, a contractor must be registered in the Contractor Registration Database.

017.03A The option selected applies to all construction contracts. A contractor may not operate under more than one option at the same time.

017.03B If the registration application is not completed or an election is not made, the contractor will be treated as a retailer under Option 1 for sales and use tax purposes.

017.04 Contractors may change their option using the Department of Labor's website (www.dol.nebraska.gov) for contractor/subcontractor registration. The new contractor option applies to all contracts in progress and also to all new contracts.

017.04A Any contractor who changes from a tax-free inventory (Option 1 or Option 3) to a tax-paid inventory (Option 2) must remit use tax to the Department of Revenue (Department) on all building materials in inventory on the date the change is effective. The contractor must also begin paying sales tax on all purchases as of the date the change is effective. Option 1 contractors must also remit use tax on any building materials on which sales or use tax has not already been paid or collected that has been incorporated into an ongoing project.

017.04B Any contractor who changes from a tax-paid inventory (Option 2) to a tax-free inventory (Option 1 or Option 3) will receive a credit for the sales or use tax previously paid on its building materials in inventory at the time the contractor option change becomes effective. To receive the credit, the contractor must submit a signed statement to the Department that details the amount of credit to which it is entitled. The credit will be placed on the contractor's account and can be used as the building materials that were in inventory are annexed and payments become due to the Department. The contractor is not entitled to a refund of any sales or use tax previously paid on the building materials in inventory.

017.05 OPTION 1-To be treated as a retailer with a tax exempt inventory.

017.05A Option 1 contractors are retailers of building materials that become annexed. All Option 1 contractors must have a Nebraska Sales Tax Permit.

017.05B Option 1 contractors must pay sales tax or remit use tax on all tools, supplies, equipment, scaffolding, and barricades purchased, rented, or leased; and on all purchases of taxable services such as building cleaning, pest control, and security services. Option 1 contractors cannot purchase these items exempt for resale or by using a Purchasing Agent Appointment.

017.05C Buildings and Structures, Construction and Repair.

017.05C(1) Option 1 contractors must collect sales tax from all of their customers, including contractors, on the total amount charged for building materials they annex to real estate or use to repair fixtures or property annexed to real estate, even if they sell a building or structure.

017.05C(2) Option 1 contractors who fabricate, produce, or repair building materials that they subsequently annex to real property will not collect sales tax on these labor charges if the labor charges are separately stated.

017.05C(3) Fabrication, production, or repair labor performed by another person on building materials for an Option 1 contractor are part of the cost of the building materials. The Option 1 contractor must collect sales tax on the total amount charged to the customer for building materials, including these labor charges, which are annexed to real estate by the Option 1 contractor. (Reg-1-082, Labor Charges.)

017.05C(4) Option 1 contractors will not normally collect sales tax on separately stated labor charges of the Option 1 contractor. (Reg-1-082, Labor Charges.)

017.05C(4)(a) Option 1 contractors who charge one amount for both building materials and labor must collect sales tax on the total amount charged.

017.05C(5) Option 1 contractors may purchase all building materials and other property for resale without paying sales tax by issuing to the vendor a properly completed Nebraska Resale or Exempt Sale Certificate, Form 13, Section A.

017.05C(5)(a) Option 1 contractors must pay sales tax or remit use tax on all charges for building materials annexed by another Option 1 subcontractor.

017.05C(5)(b) Option 1 contractors are not required to remit use tax on building materials annexed in a construction project that is in another state or in a construction project that is outside the United States.

017.05C(5)(c) Option 1 contractors may purchase for resale any fabrication, production, or repair labor performed by another person on building materials that will be annexed to real estate by the Option 1 contractor.

017.05D Property not Annexed.

017.05D(1) Option 1 contractors are retailers of building materials or other property that is not annexed. Option 1 contractors must collect sales tax on the total amount charged unless the sale is otherwise exempt.

017.05D(2) Option 1 contractors must collect sales tax on the total amount charged for installation of tangible personal property that does not become annexed to real estate. Tangible personal property that normally does not become annexed includes draperies, window air conditioners, and silt fencing.

017.05D(3) Silt fencing is not annexed to real estate. Silt fencing is similar to tools or supplies used by a contractor to complete its construction contract.

017.05D(3)(a) Option 1 contractors who only install silt fencing are making retail sales and must collect sales tax on the total amount charged.

017.05D(3)(b) Option 1 contractors who install silt fencing as part of their construction contract are the consumers of the silt fencing materials and must pay sales tax or remit use tax on their cost of the silt fencing materials.

017.05D(3)(c) Option 1 contractors must pay sales tax or remit use tax on the total amount paid for the silt fencing materials and labor to another person who only installs silt fencing. Option 1 contractors cannot purchase silt fencing tax-exempt for resale.

017.05D(4) Option 1 contractors must collect sales tax on the total amount charged for repairing or fabricating tangible personal property that is not annexed by the Option 1 contractor (Reg-1-082, Labor Charges.).

017.05D(5) Option 1 contractors who provide taxable services such as building cleaning, pest control, or security services are making retail sales and must collect sales tax on the total amount charged for these services. (See Reg-1-098, Building Cleaning and Maintenance; Reg-1-100, Pest Control Services; and Reg-1-101, Security and Detective Services.)

017.05E Telephone, Cable, Satellite Services, and Other Utilities.

017.05E(1) Option 1 contractors who install, construct, service, repair, replace, upgrade, or remove outlets, wire, cable, satellite dishes or receivers, or any other property for telephone, telegraph, cable, satellite services, and mobile telecommunication services on the general distribution system or on the customer's side of the demarcation point must collect sales tax on the total amount charged for the materials and labor regardless of whether the property is annexed or remains tangible personal property.

017.05E(2) If any or all of the charge for installation of tangible personal property is paid to the Option 1 contractor by a third-party service provider, any sales or use tax due on that part of the activation commission, finder's fee, installation charge, or similar payment made by the third-party service provider must be paid to the Department by the third-party service provider (Reg-1-081, Community or County Antenna Television Services.)

017.05E(3) Option 1 contractors will not collect sales tax on labor charges for installing or connecting gas, electricity, sewer, and water services.

017.05F Manufacturing Machinery and Equipment. (Reg-1-107 Manufacturing Machinery and Equipment Exemption.)

017.05F(1) Option 1 contractors will not collect sales tax on qualifying manufacturing machinery and equipment sold to a manufacturer whether the equipment remains tangible personal property or is annexed if the Option 1 contractor obtains a properly completed Resale or Exempt Sale Certificate, Form 13, from the manufacturer. (Reg-1-107, Manufacturing Machinery and Equipment Exemption.)

017.05F(2) Option 1 contractors will not collect sales tax on the installation or repair of qualified manufacturing machinery and equipment if the Option 1 contractor obtains a properly completed Resale or Exempt Sale Certificate, Form 13, from the manufacturer.

017.05F(3) Option 1 contractors will not collect sales tax on the amount charged for repair or replacement parts or accessories purchased for use in maintaining, repairing, or refurbishing qualified manufacturing machinery and equipment if the Option 1 contractor obtains a properly completed Resale or Exempt Sale Certificate, Form 13, from the manufacturer.

017.05F(4) Option 1 contractors may purchase qualified manufacturing machinery and equipment for resale by issuing a properly completed Resale or Exempt Sale Certificate, Form 13, to the seller.

017.05G Live Plants.

017.05G(1) Option 1 contractors planting live plants must collect sales tax on the total amount charged for the live plants and on the labor charge for installation of the live plants.

017.05G(2) Option 1 contractors who annex building materials and install live plants, must collect sales tax on the total amount charged, unless the labor charges for annexing the building materials are separately stated from the labor charges for installing live plants.

017.05G(3) Option 1 contractors must pay sales tax or remit use tax on all live plants and the installation for the live plants installed by another person.

017.05H Exempt Organizations and Exempt Governmental Units.

017.05H(1) Option 1 contractors annexing building materials for exempt organizations or exempt governmental units will not collect tax on the building materials when the exempt organization or exempt governmental unit has followed the procedures in section 017.08 of this regulation.

017.05H(2) Option 1 contractors will not collect sales tax on qualified materials for use in a community-based energy development (C-BED) project.

017.05I Direct Pay Permits.

017.05I(1) Option 1 contractors who annex building materials for a project owner holding a valid direct pay permit may accept a copy of the direct pay permit and will not collect sales tax on the amount charged directly to the project owner for the building materials.

017.06 OPTION 2-To be treated as a consumer with a tax-paid inventory.

017.06A Option 2 contractors are consumers of building materials that become annexed. Option 2 contractors who make sales described in subsections 017.06D, 017.06E, or 017.06G are retailers and must have a Nebraska Sales Tax Permit.

017.06B Option 2 contractors must pay sales tax or remit use tax on all tools, supplies, equipment, scaffolding, and barricades purchased, rented, or leased; and on all purchases of taxable services such as building cleaning, pest control, and security services. Option 2 contractors cannot purchase these items exempt for resale or by using a Purchasing Agent Appointment.

017.06C Buildings and Structures, Construction and Repair.

017.06C(1) Option 2 contractors will not normally collect sales tax on any repairs or improvements to real estate or property annexed to real estate.

017.06C(2) Option 2 contractors who fabricate, produce, or repair building materials that they subsequently annex to real property will not collect sales tax on these labor charges if the labor charges are separately stated.

017.06C(3) Option 2 contractors must pay sales tax on all building materials and other taxable items when purchased or received.

017.06C(3)(a) Option 2 contractors must remit use tax directly to the Department on all building materials and other taxable items on which no sales tax has been paid when the materials or other items are received.

017.06C(3)(b) Option 2 contractors must pay sales tax or remit use tax on all charges for building materials annexed by an Option 1 subcontractor.

017.06C(3)(c) Option 2 contractors must pay sales or remit use tax on fabrication, production, or repair labor performed by another person on building materials which are annexed to real estate by the Option 2 contractor. (Reg-1-082, Labor Charges.)

017.06C(4) Option 2 contractors are not allowed a credit or refund for sales or use taxes paid on building materials subject to sales tax, that are withdrawn from tax-paid inventory for annexation to real estate in another state.

017.06C(4)(a) Option 2 contractors may receive a credit or refund for use tax paid on building materials that are withdrawn from inventory for annexation to real estate in another state only if the seller of the building materials is not licensed to collect sales tax in this state and is not engaged in business in this state. (Reg-1-004.02 for definition of “engaged in business in this state.”)

017.06C(4)(b) Option 2 contractors may receive a credit or refund of tax paid on building materials used in a construction project that is outside the United States.

017.06D Property not Annexed.

017.06D(1) Option 2 contractors are retailers for any sales of building materials or other property that is not annexed. Option 2 contractors must collect sales tax on the total amount charged unless the sale is otherwise exempt.

017.06D(1)(a) When retail sales of tax-paid inventory items are made, the Option 2 contractor must collect sales tax on the full sales price. The tax reported to the Department will be the difference between the Nebraska and local option tax the contractor previously paid on the items and the tax collected from the customer.

017.06D(2) Option 2 contractors must collect sales tax on the total amount charged for installation of tangible personal property that does not become annexed to real estate. Tangible personal property that normally does not become annexed includes draperies, window air conditioners, and silt fencing.

017.06D(3) Silt fencing is not annexed to real estate. Silt fencing is similar to tools or supplies used by a contractor to complete its construction contract.

017.06D(3)(a) Option 2 contractors who only installs silt fencing are making retail sales and must collect sales tax on the total amount charged.

017.06D(3)(b) Option 2 contractors who install silt fencing as part of their construction contract are the consumers of the silt fencing materials and must pay sales tax or remit use tax on their cost of the silt fencing materials.

017.06D(3)(c) Option 2 contractors must pay sales tax or remit use tax on the total amount paid for the silt fencing materials and labor to another person who only installs silt fencing.

017.06D(4) Option 2 contractors must collect sales tax on the total amount charged for repairing or fabricating tangible personal property that is not annexed by the Option 2 contractor (Reg-1-082, Labor Charges.)

017.06D(5) Option 2 contractors who provide taxable services such as building cleaning, pest control, or security services are making retail sales and must collect sales tax on the total amount charged for these services. (Reg-1-098, Building Cleaning and Maintenance; Reg-1-100, Pest Control Services; and Reg-1-101, Security and Detective Services.)

017.06D(6) Option 2 contractors may purchase items tax-exempt when these items will be resold without being annexed.

017.06E Telephone, Cable Satellite Services, and Other Utilities.

017.06E(1) Option 2 contractors who install, construct, service, repair, replace, upgrade, or remove outlets, wire, cable, satellite dishes or receivers, or any other property for

telephone, telegraph, cable, satellite services, and mobile telecommunications services must collect sales tax as follows:

- 017.06E(1)(a) Option 2 contractors must collect sales tax on the total amount charged when working on the service provider's side of the demarcation point (i.e., the general distribution system) whether the property is annexed or remains tangible personal property.
- 017.02E(1)(b) Option 2 contractors must collect sales tax on the total amount charged when acting as a subcontractor for a telephone, telegraph, or mobile telecommunications service provider on the customer's side of the demarcation point.
- 017.02E(1)(c) Except as provided in subsection 017.06E(1)(b), Option 2 contractors will not collect sales tax when working on the customer's side of the demarcation point.
- 017.02E(1)(d) Option 2 contractors will not collect sales tax on labor charges for installing or connecting gas, electricity, sewer, and water services.
- 017.06E(2) Option 2 contractors must pay sales tax or remit use tax on all of their purchases of wire, cable, outlets, and other property used to install or construct telephone, telegraph, cable, satellite services, and mobile telecommunications services.
- 017.02E(3) If any or all of the charge for installation of tangible personal property is paid to the Option 2 contractor by a third-party service provider, any sales or use tax due on that part of the activation commission, finder's fee, installation charge, or similar payment made by the third-party service provider must be paid to the Department by the third party service provider. (Reg-1-081, Community and County Antenna Television Service.)
- 017.06F Manufacturing Machinery and Equipment. (Reg-1-107, Manufacturing Machinery and Equipment Exemption.)
 - 017.06F(1) Option 2 contractors must pay sales tax or remit use tax on all manufacturing machinery and equipment and any related repair or replacement parts they purchase and annex for a manufacturer.
 - 017.06F(1)(a) Option 2 contractors cannot purchase these items without paying tax even if they have a Nebraska Resale or Exempt Sale Certificate, Form 13, or a Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17, from a manufacturer.
 - 017.06F(2) Option 2 contractors will not collect sales tax on charges to install, or repair qualified manufacturing machinery and equipment.
- 017.06G Live Plants.
 - 017.06G(1) Option 2 contractors planting live plants must collect sales tax on the total amount charged for the live plants, and on the labor charge for installation of the live plants.

017.06G(2) Option 2 contractors who annex building materials and install live plants must collect sales tax on the total amount charged, unless the charges for annexing the building materials are separately stated from the labor charges for installing live plants.

017.06G(3) Option 2 contractors must pay sales tax or remit use tax on all live plants and the installation for the live plants installed by another person.

017.06H Exempt Organizations and Exempt Governmental Units.

017.06H(1) Option 2 contractors annexing building materials for exempt organizations or exempt governmental units may purchase building materials without paying the sales or use tax when the exempt organization or exempt governmental unit has followed the procedures in section 017.08 of this regulation.

017.06H(2) Option 2 contractors may purchase qualified materials for use in a community-based energy development (C-BED) project tax exempt.

017.06I Direct Pay Permits.

017.06I(1) Option 2 contractors must pay sales tax or remit use tax on building materials annexed even if they have a copy of the direct pay permit from the project owner.

017.07 OPTION 3-To be treated as a consumer with a tax EXEMPT inventory.

017.07A Option 3 contractors are consumers of building materials that become annexed. Option 3 contractors who make sales described in subsections 017.07D, 017.07E, or 017.07G are retailers and must have a Nebraska Sales Tax Permit.

017.07B Option 3 contractors must pay sales tax or remit use tax on all tools, supplies, equipment, scaffolding, and barricades purchased, rented, or leased; and on all purchases of taxable services such as building cleaning, pest control, and security services. Option 3 contractors cannot purchase these items exempt for resale or by using a Purchasing Agent Appointment.

017.07C Buildings and Structures, Construction and Repair.

017.07C(1) Option 3 contractors will not normally collect sales tax on any repairs or improvements to real estate or property annexed to real estate.

017.07C(2) Option 3 contractors who fabricate, produce, or repair building materials that they subsequently annex to real property will not collect sales tax on these labor charges if the labor charges are separately stated.

017.07C(3) All building materials and other property that will be resold may be purchased for resale purposes without paying tax by issuing to the vendor a properly completed Nebraska Resale or Exempt Sale Certificate, Form 13, Section A.

017.07C(3)(a) Option 3 contractors must remit use tax directly to the Department on all building materials when the building materials are removed from inventory or when received at the job site.

- 017.07C(3)(b) Option 3 contractors must remit use tax directly to the Department on all other taxable property on which no sales tax was paid when the property is received.
- 017.07C(3)(c) Option 3 contractors must remit use tax directly to the Department on fabrication, production, or repair labor performed by another person on building materials which are annexed to real estate by the Option 3 contractor. (Reg-1-082, Labor Charges.)
- 017.07C(4) Option 3 contractors must pay sales tax or remit use tax on all charges for building materials annexed by an Option 1 subcontractor.
- 017.07C(5) Option 3 contractors must remit use tax on building materials purchased with a resale certificate that are withdrawn from inventory for annexation to real estate in another state.
- 017.07C(5)(a) Option 3 contractors are not required to remit use tax on building materials used in a construction project that is outside the United States.
- 017.07C(5)(b) Option 3 contractors are not required to remit use tax on building materials withdrawn from inventory for annexation to real estate in another state if the seller of the building materials is not engaged in business in this state and is not licensed to collect sales tax in this state (Reg-1-002, Consumer's Use Tax). (See also Reg-1-004.02 for the definition of "engaged in business in this state.")
- 017.07D Property not Annexed.
- 017.07D(1) Option 3 contractors are retailers for any sales of building materials or other property that is not annexed. Option 3 contractors must collect sales tax on the total amount charged.
- 017.07D(2) Option 3 contractors must collect sales tax on the total amount charged for installation of tangible personal property that does not become annexed to real estate. Tangible personal property that normally does not become annexed includes draperies, window air conditioners, and silt fencing.
- 017.07D(3) Silt fencing is not annexed to real estate. Silt fencing is similar to tools or supplies used by a contractor to complete its construction contract.
- 017.07D(3)(a) Option 3 contractors hired only to install silt fencing are making retail sales and must collect tax on the total amount charged.
- 017.07D(3)(b) Option 3 contractors who install silt fencing as part of their construction contract are the consumers of the silt fencing and must remit use tax on their cost of the silt fencing materials.
- 017.07D(3)(c) Option 3 contractors must pay sales tax or remit use tax on the total amount paid for the silt fencing materials and labor to another person who only installs silt fencing. Option 3 contractors cannot purchase silt fencing tax-exempt for resale.

017.07D(4) Option 3 contractors must collect and remit sales tax on the total amount charged for repairing or fabricating tangible personal property that is not annexed by the Option 3 contractor.

017.07D(5) Option 3 contractors who provide taxable services such as building cleaning, pest control, or security services are making retail sales and to must collect and remit sales tax on the total amount charged for these services. (See Reg-1-098, Building Cleaning and Maintenance; Reg-1-100, Pest Control Services; and Reg-1-101, Security and Detective Services.)

017.07D(6) Option 3 contractors will not remit use tax on items that are resold without being annexed.

017.07E Telephone, Cable, Satellite Services, and Other Utilities.

017.07E(1) Option 3 contractors who install, construct, service, repair, replace, upgrade, or remove outlets, wire, cable, satellite dishes or receivers, or any other property for telephone, telegraph, cable, satellite services, and mobile telecommunication services providers must collect sales tax as follows:

017.07E(1)(a) Option 3 contractors must collect sales tax on the total amount charged when working on the service provider's side of the demarcation point, (i.e., the general distribution system) whether the property is annexed or remains tangible personal property.

017.07E(1)(b) Option 3 contractors must collect sales tax on the total amount charged when acting as a subcontractor for a telephone, telegraph, or mobile telecommunications service provider on the customer's side of the demarcation point.

017.07E(2)(c) Except as provided in 017.07E(1)(b), Option 3 contractors will not collect sales tax when working on the customer's side of the demarcation point.

017.07E(1)(d) Option 3 contractors will not collect sales tax on labor charges for installing or connecting gas, electricity, sewer, and water services.

017.07E(2) Option 3 contractors must remit use tax on all wire, cable, outlets, and other property used to install or construct telephone, telegraph, cable, satellite, services, and mobile telecommunication services.

017.07E(3) If any or all of the charge for installation of tangible personal property is paid to the Option 3 contractor by a third-party service provider, any tax due on that part of the activation commission, finder's fee, installation charge, or similar payment made by the third-party service provider shall be paid to the Department by the third-party service provider (Reg-1-081, Community and County Antenna Television Service.)

017.07F Manufacturing Machinery and Equipment (Reg-1-107 Manufacturing Machinery and Equipment Exemption.)

017.07F(1) Option 3 contractors must remit use tax on all manufacturing machinery and equipment and any related repair or replacement parts they purchase and annex for a manufacturer.

017.07F(1)(a) Option 3 contractors must remit use tax on these items even if they have a Nebraska Resale or Exempt Sale Certificate, Form 13, or a Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17, from a manufacturer.

017.07F(2) Option 3 contractors will not collect sales tax on charges to install, or repair qualified manufacturing machinery and equipment.

017.07G Live Plants.

017.07G(1) Option 3 contractors planting live plants must collect sales tax on the total amount charged for the live plants, and on the labor charge for installation of the live plants.

017.07G(2) Option 3 contractors who annex building materials and install live plants must collect sales tax on the total amount charged unless the charges for annexing the building materials are separately stated from the labor charges for installing live plants.

017.07G(3) Option 3 contractors must pay sales tax or remit use tax on all live plants and the installation for the live plants installed by another person.

017.07H Exempt Organizations and Exempt Governmental Units.

017.07H(1) Option 3 contractors annexing building materials for exempt organizations or exempt governmental units are not required to remit use tax on building materials when the exempt organization or exempt governmental unit has followed the procedures in section 017.08 of this regulation.

017.07H(2) Option 3 contractors are not required to remit use tax on their cost of qualified materials for use in a community-based energy development (C-BED) project.

017.07I Direct Pay Permits.

017.07I(1) Option 3 contractors must remit use tax on building materials annexed even if they have a copy of the direct payment permit from the project owner.

017.08 Projects for Exempt Organizations and Exempt Governmental Units.

017.08A Qualified exempt organizations and exempt governmental units are listed in Reg-1-012, Exemptions. The following procedures allow the exempt organizations or exempt governmental units to have construction completed without the payment of tax on building materials which are physically annexed to the building or structure and which subsequently are owned by the exempt governmental unit or exempt organization. The contractor must pay sales tax or remit use tax on its purchases or rentals of tools, supplies, equipment, scaffolding, barricades, and on all purchases of taxable services such as building cleaning, pest control and security services.

017.08A(1) An exempt organization or exempt governmental unit may furnish building materials. The organization or governmental unit will issue a properly completed Nebraska Resale or Exempt Sale Certificate, Form 13, to the retailers of the building materials.

017.08A(2) The exempt organization or exempt governmental unit, as project owner, may be entitled to a refund of tax paid on building materials. The United States government, the state, and educational institutions under the governance of the University of Nebraska Board of Regents, or State College Board of Trustees will not receive any refunds.

017.08A(2)(a) If the exempt organization or exempt governmental unit will not appoint the contractor as a purchasing agent, the Option 2 or Option 3 contractor must pay sales tax or remit use tax on all building materials. The exempt organization or exempt governmental unit may obtain a refund of the tax paid if:

017.08A(2)(b) The Option 2 or Option 3 contractor provides the exempt organization or exempt governmental unit with a certified statement of the tax paid on the building materials by the contractor and all subcontractors, and

017.08A(2)(c) The exempt organization or exempt governmental unit applies for a refund from the Department. The exempt organization or exempt governmental unit may apply for a refund of any sales tax it paid directly on building materials, and any sales or use tax paid or remitted on building materials by Option 2 or 3 contractors as shown on a certified statement from the contractor.

017.08A(3) The exempt organization or exempt governmental unit may appoint the contractor as a purchasing agent. The contractor may then purchase building materials tax-free. The appointment as a purchasing agent for the exempt organization or exempt governmental unit must be made before the building materials are annexed.

017.08A(3)(a) The contractor will delegate to all subcontractors the authorization as purchasing agent.

017.08A(3)(b) The contractor or subcontractors will provide an exempt sale certificate and a copy of the purchasing agent appointment to suppliers when purchasing the building materials to be annexed.

017.08A(3)(c) The appointment must be made using a Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17, or a previously approved substitute form containing the same information.

017.08A(3)(d) The United States government may use its own forms to make the purchasing agent appointment. If the United States government chooses not to issue a purchasing agent appointment, the building materials will be taxable.

017.08A(3)(e) The applicable Purchasing Agent Appointment and Delegation of Authority for Sales and Use Tax, Form 17, or exempt sale certificate will be kept by the contractor or subcontractor who has been appointed or delegated as purchasing agent.

017.08A(4) When a contractor is operating under Option 1, and is the only contractor involved in the project, that contractor may accept a Nebraska Resale or Exempt Sale Certificate, Form 13, from the exempt organization or exempt governmental unit. The Option 1 contractor will not charge sales tax to the exempt organization or exempt governmental unit.

017.08A(5) When the contractor is operating under either Option 2 or Option 3, the contractor cannot accept an exempt sale certificate from the exempt organization or exempt governmental unit. The exempt organization or exempt governmental unit must appoint the Option 2 or Option 3 contractor as its purchasing agent, buy the materials, or apply for a refund of sales tax that is paid.

017.08B When an organization is required to be licensed, certified, approved, or accredited in order to be an exempt organization, but the organization was not licensed, certified, approved, or accredited at the time of the construction, the organization cannot issue either a purchasing agent appointment or an exemption certificate. When the organization becomes licensed, certified, approved, or accredited upon completion of the project, the exempt organization may apply for a refund of the tax remitted or collected by the contractors.

017.08C Generally, a contractor cannot obtain a refund of any tax remitted or collected on a project for an exempt organization or exempt governmental unit. The refund will normally be paid to the exempt organization or exempt governmental unit. A contractor may only obtain a refund or credit of tax paid on building materials when the contractor was appointed as a purchasing agent before the materials were annexed and the contractor paid tax on the building materials.

017.09 **Fixed Price Contracts.**

017.09A A contractor using fixed-price contracts may owe the state additional tax or may receive a refund of tax on building materials used in fixed-price contracts when there is a tax rate change.

017.09A(1) If the tax rate is decreased during the term of the fixed-price contract, the contractor must remit to the Department the difference between the tax actually paid on building materials and the tax that would have been paid at the tax rate in effect prior to the decrease, provided the amount of such payment exceeds ten dollars.

017.09A(2) If the tax rate is increased during the term of a fixed-price contract, the contractor must pay to the Department the sales or use tax at the increased rate on all materials purchased. The contractor may receive a refund of the amount of the additional sales or use tax paid because of the rate increase, provided the amount of the additional sales or use tax exceeds ten dollars.

017.09A(2)(a) The contractor must submit a copy of the contract and any other appropriate evidence to document the amount of additional sales or use tax paid on the building materials in the project.

017.09A(3) A change in the property taxed or exempted from tax is not a tax rate change for the purposes of this subsection.

017.09A(4) An adoption, repeal, or change in the rate of a local option tax is a tax rate change for purposes of this subsection and may result in a refund, or require the payment of additional tax.

017.09B An owner of a construction project completed using a fixed-price contract may owe the state additional sales or use tax on contractor labor in fixed-price contracts when the taxability of contractor labor changes.

017.09B(1) If the sales or use tax on contractor labor no longer applies to a construction project during the term of the fixed-price contract, the owner of the construction project must pay to the contractor or the Department, the difference between the sales or use tax actually paid on contractor labor and the sales or use tax that would have been paid prior to the change, provided the amount of such payment exceeds ten dollars.

(Section 48-2117, R.S. Supp. 2009 and sections 77-2701.10, 77-2701.16, 77-2701.34, 77-2701.42, 77-2701.44, , 77-2704.12, 77-2704.15, 77-2704.32, 77-2704.33, 77-2704.44, and 77-2704.55, R.R.S., 2009. June 6, 2011.)

REG-1-018 RENT OR LEASE OF TANGIBLE PERSONAL PROPERTY

018.01 Any person who leases or rents property for storage, use, or other consumption in this state is a retailer. A lease or rental is the transfer of possession or control of property for a fixed or indeterminate term for a consideration. A lease or rental may include future options to purchase or extend the lease or rental agreement.

018.01A Receipts from a lease or rental of property requiring recurring periodic payments are sourced as follows: the first periodic payment is sourced at the location where the property is received by the lessee; payments subsequent to the first payment are sourced at the primary property location. The primary property location is an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business when use of this address does not constitute bad faith. The property location is not altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

018.01B Receipts from the lease or rental of property not requiring recurring payments are sourced where the property is received by the lessee.

018.02 Retailers who lease or rent property must obtain a permit, and collect and remit the state and applicable local sales tax to the Nebraska Department of Revenue (Department) in the same manner as any other retailer. The sales tax is computed on the total amount for which the property is leased or rented, valued in money whether paid in money or otherwise, without any deduction or exclusion of any cost components such as:

018.02A The cost of the property leased or rented;

018.02B The cost of material used, labor or service costs, interest charged, insurance, losses, or any other expenses;

018.02C The cost of transportation of the property at any time; and

018.02D The amount of any excise or property taxes levied against the property.

018.03 The total amount for which property is leased or rented includes any services which are a part of the lease or rental and any amount for which credit is given to the lessee by the lessor. If the lease or rental charge is comprised of a fixed amount plus a variable amount, sales tax applies to the total of these charges.

018.04 If a retailer establishes a separate price schedule for his or her product when the sale includes the use of the seller's equipment by the purchaser, then the difference between the product price with the equipment and the product price without the equipment is a lease or rental subject to the sales and use tax.

018.05 A sale for the sole purpose of that purchaser's leasing or renting the property to another person is a sale for which a resale certificate may properly be issued, except where:

018.05A The lease or rental payments are not at a fair market value;

018.05B The property is used by the purchaser and is also leased or rented to others, in which case both the purchase of the property is taxable and the subsequent lease or rental of the property is also taxable; and

018.05C The property is incidental to the lease or rental of real estate, such as furniture for a furnished apartment.

018.06 A sale to an unrelated person or entity conditioned upon a simultaneous lease back to the original owner is a sale for which a resale certificate may properly be issued.

018.07 The charge for the lease or rental of a cabin trailer, mobile home, or similar property for less than 30 days is taxable. If the lease or rental period is for 30 days or more, it is also a taxable lease or rental of property unless the cabin trailer or mobile home has either been permanently annexed to realty or set up for occupancy as a dwelling for human occupancy according to local building codes. (Reg-1-046, Hotels, Lodgings, and Accommodations)

018.07A A cabin trailer or mobile home has been permanently annexed to the land when a permanent foundation, such as a concrete slab or concrete footings, secures the cabin trailer or mobile home to the site. Blocking and leveling the ground or setting the unit on concrete blocks is not permanent annexation to the land.

018.08 A lease or rental of property from a subsidiary to the parent, from a parent to a subsidiary, from one subsidiary to another subsidiary of the same parent, or between brother-sister companies is exempt when the lessor has paid the tax on its purchase of the property being leased. A lessor has the same sales and use tax liability on the purchase of property to be leased to the lessee as if the lessee had purchased the property directly.

018.08A This exemption applies to corporations that have at least 50 percent common ownership, and other entities that would be considered a parent, subsidiary, or brother-sister if they were corporations.

018.08B Sole proprietorships are not entities separate and apart from the owners and do not qualify for this exemption.

018.09 A lease or rental will not qualify as an occasional sale.

018.10 Regardless of how a transaction is characterized under generally accepted accounting principles, a lease or rental does not include the following transactions:

018.10A A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;

018.10B A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of the required payments and payment of a nominal option price that does not exceed the greater of \$100.00 or one percent of the total required payments; and

018.10C Providing property, such as equipment, along with an operator where the operator is necessary for the property to perform as designed. For this exclusion, the operator must do

more than maintain, inspect, or set up the property. For motor vehicles with an operator, see Reg-1-019, Rental or Lease of Vehicles.

018.11 Leases or rentals of motion picture films, video tapes, digital products, and satellite services to a person who receives the product or service electronically for further broadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution, or exhibition of the product or service for use where a taxable admission is later charged for showing, are exempt.

018.12 Leases or rentals of lodgings for periods of 30 days or more, are exempt.

018.13 Under Neb. Rev. Stat. section 77-2704.08, when a lessee has an option to purchase the property during the term of the lease or rental, and to apply some or all of the lease or rental payments to the purchase price of the property, the sales price may be reduced by the amount of any lease or rental payments applied to the purchase price if the lessor collected sales tax on the payments.

018.14 The classification of a transaction as a lease or rental is determined by the law in effect at the inception of the lease or rental.

(Sections 77-2701.16, 77-2701.18, 77-2701.32, 77-2701.34, 77-2701.35, 77-2703.01, 77-2704.08, and 77-2704.28, R.R.S., 2009. November 6, 2010.)

REG-1-019 RENTAL OR LEASE OF VEHICLES

019.01 When the words rental or lease or derivatives thereof are hereafter used, they shall be deemed to be synonymous for the purposes of this regulation. When the word motor vehicle or vehicle is used it shall refer to automobiles, trucks, trailers, semitrailers, and truck tractors as defined in section 60-301 of the Nebraska Revised Statutes which are not classified as transportation equipment.

019.01A Lease or rental shall have the same meaning as in Reg-1-018, but shall also include any agreement covering motor vehicles where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined for federal income tax purposes.

019.02 A rental occurs when the person to whom a motor vehicle is rented exercises control over the vehicle. Control over the vehicle may be exercised by the person renting it even when drivers are furnished when:

019.02A The person has the exclusive use of the vehicle for a period of time; and

019.02B The person has the right to direct the manner of the use of the vehicle, whether exercised or not, for that period.

019.03 All lessors of motor vehicles are retailers. They are required to obtain a permit and must collect and remit the tax on the gross lease receipts, except as provided in 019.07. (For the proper amount of tax to be collected when the tax rate changes see Reg-1-016.02A). A lessor collecting the tax on the lease receipts may purchase and register the vehicles to be leased without payment of the tax on the purchase price. The lessor is purchasing such vehicles for resale. Before registering leased vehicles tax-free, evidence that the lessor holds a permit to properly collect the tax on the lease receipts must be provided to the Department of Motor Vehicles or the county treasurer, or other designated county official, of the county in which registration will occur.

019.03A Receipts from the rental or lease of a motor vehicle, other than transportation equipment, requiring recurring periodic payments are taxable at the primary property location.

019.03B Receipts from the rental or lease of a motor vehicle not requiring recurring periodic payments are taxed at the location where the vehicle is received by the purchaser.

019.03C Receipts from the rental or lease of transportation equipment are taxable where the seller transfers physical possession or control of the equipment to the buyer.

019.03C(1) Transportation equipment means:

019.03C(1)(a) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce;

019.03C(1)(b) Trucks and truck tractors with a gross weight rating of ten thousand and one pounds or greater, or trailers, semitrailers, or passenger buses that are (i) registered through the International Registration Plan and (ii) operated under authority of a carrier

authorized and certified by the United States Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce;

019.03C(1)(c) Aircraft operated by air carriers authorized and certificated by the United States Department of Transportation or another federal authority or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce; and

019.03C(1)(d) Containers designed for use on and component parts attached or secured on transportation equipment identified in Reg-1-019.03C(1)(a) through Reg-1-019.03C(1)(c).

019.04 The total amount for which the motor vehicle is leased includes any services which are a part of the lease and any amount for which credit is given to the lessee by the lessor. If the lease or rental charge is comprised of a fixed amount plus a variable amount, (e.g., \$15.00 per day plus \$0.15 per mile) sales or use tax applies to the total of these charges.

019.04A The total amount for which a vehicle is leased does not include any amount paid by the lessee to the county treasurer, other designated county official, or the Department of Motor Vehicles for in lieu of property tax.

019.05 A lease of a motor vehicle from a subsidiary to the parent, from a parent to a subsidiary, from one subsidiary to another subsidiary of the same parent, or between brother-sister companies is exempt when the lessor has paid the tax on its purchase of the motor vehicle being leased. Such lessor shall have the same sales and use tax liability on the purchase of the motor vehicle to be leased to the lessee as if the lessee had purchased the motor vehicle directly. This subdivision applies to corporations that have at least fifty percent common ownership, and other entities that would be considered a parent, subsidiary, or brother-sister if they were corporations.

019.06 The receipts from the lease of motor vehicles to be engaged as common or contract carrier vehicles by persons holding a numbered certificate of exemption issued by the Department of Revenue are exempt; provided, the lessor is furnished evidence that the lessee holds such certificate or number.

019.07 In lieu of collecting and remitting tax upon the gross receipts, the lessor may elect to pay the tax on the cost of all vehicles, including vehicles presently under lease. The election does not apply to motor vehicles leased for use as common or contract carrier vehicles. If such an election is made, it shall be pursuant to the following conditions:

019.07A Notice shall be filed with the Department of Revenue and such election shall be effective only upon approval;

019.07B The election, when made and approved by the Department of Revenue, shall remain in force and effect for a period of not less than two years; and

019.07C The election shall apply to all vehicles of the lessor leased for periods of one year or more, except for vehicles leased for use as common or contract carrier vehicles. Persons leasing

motor vehicles for both periods of less than one year and for periods of one year or more and who have elected to remit the applicable tax on the cost of the motor vehicles at the time of purchase, must segregate the taxable receipts from the nontaxable receipts in their records.

019.08 The election shall be filed on forms prescribed by the Department of Revenue and in addition to general information shall contain a list of all vehicles under existing lease as to term of the lease, model, year, make, and fair market value, as of the date of the election. If some of the vehicles are leased for use as common or contract carrier vehicles, the list must show which vehicles are being used as common or contract carriers, the lessee of each vehicle, and the lessee's Nebraska common or contract carrier exemption number.

019.09 Vehicles under existing lease on the effective date of the election, with at least one year remaining on the existing lease, shall be valued at their fair market value and the state and applicable city sales tax computed on such amounts. The computed tax must be remitted to the Department of Motor Vehicles or the county treasurer, or other designated county official, of the county in which the vehicles are registered within five (5) days from the receipt of approval of the lessor's option. The lessor must pay the state and applicable city sales tax on the fair market value of any vehicle the first time it is leased for a period of one year or more after the effective date of the option, unless the tax was previously paid at the time of purchase or under this subsection. The lessor must submit proof of payment of the tax to the Nebraska Department of Revenue, Taxpayer Services, P.O. Box 94818, Lincoln, Nebraska 68509.

019.10 The lessor who elects to pay the tax on the cost of such vehicles will purchase and pay the tax in the following manner: The seller shall state on the sales invoice the dollar amount of the tax and furnish the purchaser a certified statement of the transaction on a form provided by the Department of Revenue. The applicable tax will be paid by the purchaser to the Department of Motor Vehicles or the county treasurer, or other designated county official, at the time of application for registration of the motor vehicle for operation on the highways of this state. The Department of Motor Vehicles or the county treasurer, or other designated county official, shall furnish a statement for completion by the purchaser when the purchase was made from an out-of-state dealer. The purchaser will be responsible for establishing the cost (price paid) for such motor vehicle with a copy of the sales invoice or other documents.

019.10A The lessor who made the election and is purchasing a vehicle to be leased for use as a common or contract carrier vehicle, shall purchase such vehicle for resale and will not pay the tax at the time of registration.

019.10B When a vehicle that was purchased for use as a common or contract carrier vehicle is first leased for one year or more to a person who is not a common or contract carrier, the lessor shall pay the tax on the fair market value of the vehicle at the time of the lease.

019.11 A lessor who has been operating under this election for at least two years may make application to the Department of Revenue, to terminate such election. Until such time as an application to terminate has been received and acknowledged by the Department, the retailer shall continue to operate as set out in 019.07 through 019.10. The application to terminate shall be in

the form of a written request and, when acknowledged by the Department, will become effective on the first day of the month following the postmark date of the acknowledgment.

019.12 Tax paid on vehicles under existing leases at the time the election is terminated cannot be refunded either to the lessor or lessee. State and applicable local option sales tax will be charged and collected on the gross vehicle lease receipts beginning with the billing issued on or after the first day of the month following the postmark date of the acknowledgment of termination.

(Sections 77-2701.33 and 77-2701.35, R.R.S. 2003, and sections 77-2701.34, 77-2703(1)(g) and (h), and 77-2703.01(8) and (9), R.S.Supp., 2004. April 12, 2005.)

REG-1-020 MOTOR VEHICLES

020.01 Motor vehicles as used in this regulation shall mean motor vehicles, trailers, and semitrailers as defined in Section 60-301 of the Nebraska Revised Statutes. Every motor vehicle dealer in Nebraska is required to obtain a sales tax permit for each place of business in this state even though they make no sales other than of motor vehicles. The dealer shall file a tax return reporting gross sales in the same manner as all other retailers.

020.02 The sales and use tax imposed upon the sale of motor vehicles shall be the liability of the purchaser and the tax shall be collected by the county treasurer, or other designated county official, or the Department of Motor Vehicles at the time the purchaser makes application for registration of the motor vehicle for operation upon the highways of this state. If the purchaser retains such motor vehicle in this state and does not register it for operation upon the highways of this state within thirty days of the purchase date, the tax shall be paid immediately to the county treasurer, or other designated county official. If the tax is not paid within thirty days of the purchase date, the county treasurer, or other designated county official, shall collect the tax, interest from the thirtieth day until the date of payment, and a penalty of five dollars (\$5.00).

020.03 The dealer or seller is not authorized to collect the tax on the sale of motor vehicles but shall, at the time of the sale, state on the sales invoice the dollar amount of the tax and furnish the purchaser a Nebraska Sales/Use Tax and Tire Fee Statement for Motor Vehicle and Trailer Sales, Form 6.

020.03A The tax due shall be computed on the difference between the total sales price and the total of any trade-in allowance for another motor vehicle taken by any person and any rebates used to reduce the selling price of the vehicle.

020.03B All information requested by the Nebraska Department of Revenue must be furnished and a copy of each Form 6 must be sent to the Nebraska Department of Revenue by the seller at the time the tax return is filed. Any dealer or seller who fails or refuses to furnish such information or who falsifies any Form 6 may be found guilty of a misdemeanor and shall, upon conviction, be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00) for each offense.

020.03C Any dealer or seller who willfully prepares a false or fraudulent sales or use tax return or Form 6 may be found guilty of a Class IV felony and shall, upon conviction, be fined not more than ten thousand dollars (\$10,000.00), or be imprisoned not more than five years, or both.

020.03D Any purchaser, or the agent thereof, who completes a Nebraska Sales/Use Tax and Tire Fee Statement for Motor Vehicle and Trailer Sales, Form 6, claiming an exemption for any purchase which is not exempt from sales and use tax under sections 77-2701 through 77-27,135 of the Nebraska Revised Statutes, shall be subject to a penalty of one hundred dollars (\$100.00) or ten times the tax, whichever amount is larger. Any purchaser, or the agent thereof,

who fraudulently signs a Form 6 with the intention to avoid payment of the tax may, in addition to the above penalty, be found guilty of a Class IV misdemeanor.

020.03E Any seller who willfully understates the amount upon which the sales tax is due shall be subject to an administrative penalty of one thousand dollars (\$1,000.00).

020.04 County treasurers, or other designated county officials, of all counties in Nebraska and the Department of Motor Vehicles are appointed as sales and use tax collectors for all sales of motor vehicles made outside of this state to purchasers or users of motor vehicles required to be registered in this state. The county treasurer, or other designated county official, shall collect the applicable use tax from the purchaser of a motor vehicle purchased outside of this state at the time application for registration is made. The full use tax on the purchase price shall be collected by the county treasurer, or other designated county official, or the Department of Motor Vehicles if a sales or occupation tax was not paid by the purchaser in the state of purchase. If a sales or occupation tax was lawfully paid in the state of purchase at a rate less than the tax imposed in this state, use tax must be collected on the difference as a condition for registration in this state.

020.05 The purchase of a licensed motor vehicle may be exempt for any of the following reasons:

020.05A If the owner of a motor vehicle is, or was, a nonresident of this state and establishes as a fact that he or she purchased the motor vehicle outside of this state and there registered, titled, and licensed the motor vehicle, and actually used the motor vehicle for the primary purpose for which it was acquired, then the use tax is not required for licensing or registering in this state;

020.05A(1) Licensed for operation on the highways does not include any temporary registration, licensing, or in transit procedure that allows nonresidents to operate the motor vehicle on the highways of the other state, commonwealth, territory, possession, or country for a limited time with the intent to remove the motor vehicle from the other state, commonwealth, territory, possession, or country.

020.05B The motor vehicle is purchased for the purpose of renting or leasing with the rental or lease payment set at a fair market value, and the purchaser holds a sales tax permit so as to remit tax on the lease or rental receipts;

020.05C The motor vehicle is a gift to the applicant or received through inheritance and tax was previously paid by the donor or prior owner;

020.05D The purchase of the motor vehicle is exempt under paragraphs 012.02C or 012.02D of Reg-1-012, Exemptions;

020.05E The motor vehicle is purchased by a disabled person and the maximum amount allowed by law is contributed by the Veterans Administration of the United States or the Nebraska Health and Human Services Finance and Support. If the contributed amount is less than the maximum amount, only the amount of the contribution is exempt; or

020.05F The motor vehicle is sold pursuant to an occasional sale as set out in Reg-1-022, Occasional Sales.

020.06 If the purchase of a licensed motor vehicle is exempt for any of the reasons in paragraph 020.05, the county treasurer, or other designated county official, or the Department of Motor Vehicles may, after obtaining a properly completed Form 6 accurately identifying the basis for exemption, complete the registration without collecting the tax.

020.07 Motorcycles, or other all-terrain vehicles, that are not equipped for use upon the highway at the time of sale, as required by the Department of Motor Vehicles, are not treated as motor vehicles for sales and use tax purposes. A person engaged in the business of selling these vehicles must collect the sales tax at the time of sale rather than issuing a Form 6.

020.08 A rebate received by the purchaser from a manufacturer after the sale does not reduce the sales and use tax base. The retail price remains at the amount agreed upon at the time of the sale which is the amount upon which the tax must be collected.

020.08A A rebate received from a manufacturer that is used to reduce the selling price of the vehicle reduces the sales and use tax base. A rebate is used to reduce the selling price of the car when it is transferred to the dealer at the time of the sale and is shown on the sales invoice as a price reduction, partial payment, or a down payment.

020.09 Sales and use tax paid upon a vehicle which is subsequently destroyed is not refundable. The tax is imposed upon the sales transaction and the subsequent destruction of the vehicle has no effect on that sales transaction.

020.09A The purchase of a vehicle with the insurance proceeds from another vehicle is taxable. The insurance proceeds cannot be used as a trade-in or other reduction in the sales price.

020.10 If the purchaser receives a settlement under the Nebraska Lemon Law, or under arbitration as an alternative to the Lemon Law, the amount received from the manufacturer or dealer includes all of the sales and use tax that is refundable. No additional refunds will be paid by the Department of Revenue.

(Sections 60-301, and 77-2703(1)(j) R.S.Supp., 1998, and sections 77-2702.07, 77-2702.09, 77-2702.17, 77-2702.18, 77-2704.12, 77-2704.21, 77-2713, and 77-2708(1)(c), R.R.S. 1996. November 11, 1998.)

REG-1-021 MOTOR VEHICLES USED BY THE MANUFACTURER BEFORE SALE

021.01 Manufacturers of motor vehicles who withdraw such vehicles from inventory or stock for company purposes such as demonstrations, promotional or executive use, prior to the sale thereof, shall be required to pay a tax on such uses.

021.02 The tax shall be computed and paid monthly to the Department of Revenue by the motor vehicle manufacturer as part of his or her regular report of taxes due on the sale or use of taxable property and services.

021.03 The base on which the tax is to be computed shall be determined monthly by multiplying 2 1/2% times the total invoice cost to the distributors or dealers of vehicles of the same make, model, and accessory equipment. The base as so computed shall be multiplied by the tax rate in effect to arrive at the tax required to be paid.

(Section 77-2703(1)(k), R.S.Supp., 1993. May 14, 1994.)

REG-1-022 OCCASIONAL SALES

022.01 Occasional sales are exempt from sales tax. Occasional sale means a sale, but not a lease or rental, of property in a transaction described in Reg-1-022.02 through Reg-1-022.09.

022.02 An occasional sale includes transactions where the property is the subject of an intercompany sale from a subsidiary to the parent, from a parent to a subsidiary, from one subsidiary to another subsidiary of the same parent, or between brother-sister companies.

022.02A This applies to corporations that have at least 50% common ownership, and other entities that would be considered a parent, subsidiary, or brother-sister if they were corporations.

022.02B Sole proprietorships are not entities separate and apart from the owners and do not qualify for this exemption.

022.03 An occasional sale includes sales of property:

022.03A From one corporation to another corporation pursuant to a reorganization. Reorganization means a statutory merger or consolidation; or the acquisition by a corporation of substantially all of the properties of another corporation when the consideration is solely all or a part of the voting stock of the acquiring corporation or of its parent or subsidiary corporation;

022.03B From one limited liability company to another limited liability company pursuant to a reorganization;

022.03C In connection with the winding up, dissolution, or liquidation of a corporation, partnership, or limited liability company if there is a distribution of the property of the corporation, partnership, or limited liability company to the owners substantially in proportion to their share of stock or securities in the corporation, or interests of the owners of the partnership or limited liability company;

022.03D To a corporation, partnership, or limited liability company for the purpose of organizing the corporation, partnership, or limited liability company or contributing additional capital to a corporation when the former owners of the property are in control of the corporation, partnership, or limited liability company immediately after the transfer, and the stock, securities, or interest received by each is substantially in proportion to his or her interest in the property prior to the transfer; or

022.03E Any other transaction that qualifies as a tax-free transaction under the Internal Revenue Code.

022.04 The transactions described in Reg-1-022.02 and Reg-1-022.03 may involve new or used property, motor vehicles, or motorboats. Persons claiming the occasional sale exclusion for purchases of motor vehicles or motorboats must provide the county treasurer, or other designated

county official, with evidence that the transfer falls within Reg-1-022.02 or Reg-1-022.03, at the time of registration of the motor vehicle or motorboat.

022.05 Occasional sale includes the sale of either new or used business assets, where a person liquidates his or her business in a single transaction to a single buyer. The liquidation must be all or substantially all of the property of the trade or business.

022.06 Occasional sale includes a sale of used business or farm machinery or equipment which was productively used by a seller or the seller's predecessor as a depreciable capital asset for at least one year in the business. The purchaser must obtain an exempt sale certificate or other documentation from the seller demonstrating that the sale was sales tax exempt. See Reg-1-014.

022.07 The transactions described in Reg-1-022.02 through Reg-1-022.06 may include aircraft, and are occasional sales only if the seller or the seller's predecessor previously paid sales or use tax, the seller purchased the property prior to June 1, 1967, or the sale was exempt from sales and use tax when the property was purchased.

022.08 Occasional sale includes a sale of household goods and personal effects by an individual when the property was originally acquired and used for personal use. These sales must occur at an individual's residence, and may include the property of more than one person, or be carried out by an individual on an online auction site.

022.08A These sales may not be held on more than three days during a calendar year at any residence or on an online auction site.

022.08B These sales may not include property which is similar to property that is sold by the individual or any member of his or her household in a trade or business.

022.08C Household goods and personal effects do not include motor vehicles, motorboats, or aircraft.

022.09 Occasional sale includes one sale activity during a calendar year by a nonprofit religious organization.

022.09A The sale must be during an activity of the nonprofit religious organization, but it does not have to take place at a location owned by the nonprofit religious organization.

022.09B The sale may last up to three consecutive days.

022.09C The nonprofit religious organization may have the assistance of an auctioneer at this sale without having to collect sales tax on the property or services sold.

022.09D The nonprofit religious organization may sell anything it owns at its sale. The property or services sold may be made especially for the sale, purchased for the sale, or donated to the nonprofit religious organization for the sale. Sales of motor vehicles, trailers, or semi-trailers made at the sale are not occasional sales.

022.10 Occasional sale does not include:

022.10A Any sale that is made, supervised, or aided by an auctioneer, or agent or employee of an auctioneer, except for a sale by a nonprofit religious organization as provided in Reg-1-022.09C;

022.10B Any sale of inventory or property purchased for resale or for lease;

022.10C Any sale of a motor vehicle or motorboat, except a sale described in Reg-1-022.02 or Reg-1-022.03; or

022.10D Any sale of new property, except a sale described in Reg-1-022.02, Reg-1-022.03, Reg-1-022.05, or Reg-1-022.09.

(Neb. Rev. Stat. §§ 77-2701.24 and 77-2704.48, and Attorney General Opinion Number 252, June 16, 1978, June 24, 2017.)

REG-1-023 COMPONENT PARTS - MANUFACTURING, PROCESSING, AND FABRICATION

023.01 Property that becomes an ingredient or component part of a product manufactured, processed, assembled, or fabricated for sale by the purchaser is exempt. Property that is necessary for production but which does not become an ingredient or component part of the product sold is taxable.

023.02 To qualify as exempt the property must meet all of the following conditions:

023.02A The property must physically or chemically enter into and remain a part of the finished product;

023.02B The property must be an essential ingredient or component of the finished product; and

023.02C The finished product must be a product that was manufactured, processed, or fabricated for sale by the purchaser of the ingredient or component part.

023.03 A resale certificate should be used to purchase property that qualifies for exemption as an ingredient or component part.

023.04 Fabrication labor performed directly on the product being produced for sale can be purchased for resale.

023.05 Not all sales of property or products to manufacturers, processors, or fabricators are exempt. The property or products which are consumed by them in manufacturing or processing, but which do not become an ingredient or component part of the article, substance, or commodity manufactured, processed, or fabricated, are taxable. The manufacturer, processor, or fabricator is the final buyer or ultimate consumer of such property or product, and the sale to the manufacturer, processor, or fabricator is a taxable sale. Similarly, the purchase of equipment and supplies is taxable. They do not enter into the processing of, and do not form a part of the product sold.

023.06 Since most services are not durable, they cannot generally be a component of another service. The services which are necessary for the production of another service are normally consumed by the purchaser of the service, do not become a component of the service sold, and are taxable. However, a service that becomes a component of a service offered for sale by the purchaser is exempt.

023.07 To qualify as exempt as a component of another service, the service must meet all of the following conditions:

023.07A The service purchased must directly enter into and remain a part of the finished service delivered to the customer;

023.07B The service must be substantially the same as, and an essential component of, the finished service; and

023.07C The finished service must be a service that was performed for sale by the purchaser of the component service.

023.08 A resale certificate should be used to purchase a service that qualifies for exemption as a component part.

023.09 Property or products sold to service providers are consumed by them in providing the service, and do not become a component of the service. The service provider is the final buyer or ultimate consumer of such property or product, and the sale to the service provider is a taxable sale. Similarly, the purchase of equipment and supplies used in performing the service is taxable.

(Sections 77-2702.13, 77-2702.16, 77-2702.19, and 77-2702.23, R.R.S. 2003. October 1, 2003.)

REG-1-024 DISCOUNTS AND REBATES

024.01 A cash discount allowed by the retailer is a reduction in the sales price, and the tax is computed and paid on the sales price after allowance for the discount. These discounts must appear on the invoices, records, and accounts of the retailer and be substantiated to the satisfaction of the Nebraska Department of Revenue. A discount cannot be deducted from gross receipts if it is applied to a sale of property or services which is exempt from sales tax.

024.02 A cash discount may be offered by the seller to induce payment within a specified time. A volume discount may be offered by the seller to induce larger purchases. Sales tax is calculated on the sales price of the property less the cash or volume discount allowed at the time of the sale. If the discount is not allowed until a later time, these discounts are allowed as deductions on the seller's sales tax return only when there is sufficient evidence in the seller's records to indicate that the discounts have been given to the purchaser, the sales reported on the sales tax return are the amount of sales before discounts, and the purchaser was credited or refunded any sales tax associated with the discount.

024.03 A cash rebate or instant rebate is not deductible in arriving at the sales price.

024.03A A cash rebate is given to the purchaser directly by a manufacturer after the sales transaction is complete, and is contingent upon the purchaser submitting proof that the sales transaction has been finalized.

024.03B An instant rebate is allowed at the point of sale without any additional conditions or requirements placed on the buyer, but is also reimbursed by the manufacturer to the seller.

024.03C Because the sales tax is imposed upon the gross receipts of the seller (Reg-1-001, Nature of the Sales Tax), a subsequent rebate of a portion of the sales price by a third party does not reduce the seller's gross receipts upon which the sales tax is imposed.

024.04 Vouchers, other certificates, price reductions, or group discounts which are reimbursed by a third party are not cash or volume discounts and do not reduce the seller's gross receipts upon which sales tax is imposed. (Reg-1-037, Trading Stamps, Coupons, Vouchers, Certificates, and Group Discounts).

024.05 See Reg-1-020, Motor Vehicles, for rebates on motor vehicles and Reg-1-096, Motorboats, for rebates on motorboats.

(Neb. Rev. Stat. §§ 77-2701.16 and 77-2701.35. June 24, 2017.)

REG-1-025 RETURNED ARTICLES

025.01 In the event taxable purchases are returned to the retailer by the purchaser or consumer and the sale is entirely rescinded, the retailer or an agent of the retailer certified under the Streamlined Sales Tax Agreement shall refund or give credit to the purchaser the amount of tax previously paid or charged. If only a portion of the purchase price is refunded or credited, the amount of tax to be refunded or credited by the retailer shall be computed based upon the amount of the purchase price to be refunded or credited exclusive of the tax.

025.02 No refund or credit for tax shall be given by the retailer for the return of any merchandise which is exempt from the tax. No refund or credit for tax shall be given by the retailer for goods sold for resale and returned.

025.03 The retailer or an agent certified under the Streamlined Sales Tax Agreement may deduct from gross sales on his or her tax return that portion of the sales price of the property that is refunded or credited to the purchaser; provided, he or she has previously remitted the tax to the Department of Revenue. Any charge for the return of the item, such as a restocking fee, is a portion of the purchase price that is not refunded. The deduction is to be taken on his or her tax return for the period in which the refund was made or credit given.

025.04 See Reg-1-020, Motor Vehicles, for motor vehicles or trailers returned under the Nebraska Lemon Law.

(Section 77-2701.35, R.R.S. 2003, and section 77-2701.16, R.S.Supp., 2004. April 12, 2005.)

REG-1-026 FINANCE, CARRYING, SERVICE, AND INTEREST CHARGES

026.01 Finance, carrying, service, and interest charges which are separately stated in the sales contract and are solely for the purpose of allowing a delayed payment of the sales price are not taxable; provided, that such charges are not used as a means of avoiding imposition of the tax upon the actual sales price. The retailer or an agent of the retailer certified under the Streamlined Sales Tax Agreement is required to keep complete and adequate records showing the division of gross receipts between finance, carrying, service, or interest charges and the selling price of property or services.

026.02 Handling, crating, packing, shipping, and service charges for preparing an item for sale or transportation are taxable.

(Section 77-2701.35, R.R.S. 2003, and section 77-2701.16, R.S.Supp., 2004. April 12, 2005.)

REG-1-027 REPOSSESSIONS

027.01 The sales tax previously remitted by a retailer arising from the sale of property, which is subsequently repossessed, may be allowed as a credit against the retailer's current sales tax liability, but only to the extent of the portion of the purchase price remaining unpaid at the time of repossession. In determining the unpaid amount, all payments and credits to the account must be prorated to the purchase price, tax, finance, carrying, service, and interest charges which were not taxable under Reg-1-026, Finance, Carrying, Service, and Interest Charges. No credit is allowable for expenses incurred by the retailer in attempting to collect the account or repossessing the property.

027.02 Credit for the amount of taxes paid on such unpaid portion of the purchase price of the repossessed property shall be taken on a return filed within a reasonable time after the property has been repossessed. If the retailer remitted the tax on a cash accounting basis or collected the full tax from the purchaser at the time of purchase, a credit is not allowed when the property is repossessed. A credit is allowed only if the sale of the property which has been repossessed was taxable.

027.02A No credit may be taken for the unpaid portion of the purchase price of any motor vehicle or licensable trailer since the tax is collected by the county treasurer, or other designated county official, or Department of Motor Vehicles.

027.02B No credit may be taken by any person other than the retailer who sold the item and remitted the tax. The retailer cannot take a credit when a third-party repossesses the property.

027.03 If the unpaid portion of the purchase price, or any part thereof, is subsequently collected by any means other than by sale of the repossessed property, then a tax, at the rate in effect at the time the receipts are realized under the accounting basis used by the retailer shall be paid on the amount so collected.

027.04 The transaction whereby the property is repossessed is not a sale in itself and there is no tax due on a repossession. When the repossessed property is used other than for demonstration or display to potential purchasers, the reposessor owes a use tax on the property. The amount of the unpaid debt shall be the taxable amount. However, when property which has been repossessed either by the original retailer, a finance company or other financial institution is resold, the gross receipts from such sales are taxable. The property is not normally an occasional sale since the seller has not paid tax nor productively used the property for one year.

(Section 77-2708(2)(1)(ii), R.S.Supp., 1993. May 14, 1994.)

REG-1-028 BAD DEBTS

028.01 A retailer may deduct from gross receipts on his or her tax return the amount found worthless for federal income tax purposes and actually deducted or if the reserve method is elected, charged against bad debt reserve; provided, the sales or use tax has been previously remitted to the state by the retailer. The deduction should be taken on the return for the period in which the amount was found worthless and charged off for income tax purposes.

028.02 This regulation does not apply to retailers who remit sales tax on the cash basis or who have elected to remit sales tax in accordance with paragraph 009.05 of Regulation 1-009, Accounting Methods.

028.03 No deduction is allowable for expenses incurred by the retailer in attempting to enforce the collection of any account receivable, or for that portion of a debt recovered that is retained by or paid to a third party as compensation for services rendered in collecting the account.

028.04 If the amount of an account found to be worthless and charged off for income tax purposes is comprised in part of nontaxable receipts, such as interest, carrying charges, finance charges, service charges and other charges exempt from sales or use tax and in part of taxable receipts upon which tax has been paid, a bad debt deduction may be claimed only with respect to the unpaid amount upon which tax has been remitted. In determining the unpaid amount, all payments and credits to the account must be prorated against the various elements comprising the amount the purchaser contracted to pay.

028.05 In support of claims for such credit, retailers must maintain complete and adequate records showing:

028.05A Date of original sale;

028.05B Name and address of purchaser;

028.05C Amount purchaser contracted to pay;

028.05D Amount on which retailer remitted tax;

028.05E All payments or other credits applied to account of purchaser; and

028.05F Evidence that the uncollectible portion of gross receipts on which tax was remitted actually has been legally charged off as a bad debt for income tax purposes.

028.06 If any accounts found worthless and charged off are thereafter in whole or in part collected, the amount so collected shall be included in the first return filed after such collection and the amount of the tax thereon remitted with the return. Any payments made on a debt previously charged off are applied first proportionally to the taxable price of the property or service and sales tax thereon, and secondly to the interest, service charges, and any other charges.

(Section 77-2708(2)(j), R.R.S. 2003. April 12, 2005.)

REG-1-029 TRADE-INS OR EXCHANGES

029.01 When property is sold and part of the sales price is satisfied by trading in used property that is similar to the property being sold, the retailer must collect and remit sales tax on the difference between the total selling price and the amount allowed on the trade-in. If the property provided by the purchaser is not similar to the property being purchased, or is a commodity regularly traded on an open market, the transaction is a barter transaction and not a trade-in, and tax must be collected on the full price of the property sold.

029.02 If the trade-in allowance is greater than the value at which the trade-in is later carried for inventory purposes, the excess is not an allowable cash discount on a subsequent sales tax return. There is no refund of sales tax previously paid on the property traded in, even if the buyer is paid for the difference.

029.03 The full selling price is included in "gross sales and services" on the Nebraska and Local Sales and Use Tax Return, Form 10, and the trade-in allowance for the property taken in trade is deducted to calculate "net taxable sales." The deduction for the trade-in allowance cannot exceed the sales price of the property sold, even if the buyer is paid for the difference.

029.04 If the property taken in trade is used by the retailer and not resold in the retailer's regular course of business, the retailer must collect and remit sales tax on the difference between the total selling price and the amount allowed on the trade-in. The retailer must also pay use tax on the amount allowed on the trade-in for using the property. (Reg-1-035, Consumption of Untaxed Property.)

029.05 See Reg-1-020, Motor Vehicles, and Reg-1-096, Motorboats, for exchanges of motor vehicles and motor boats.

(Neb. Rev. Stat. §§ 77-2701.16 and 77-2701.35. June 24, 2017.)

REG-1-030 LAY-AWAY AND WILL-CALL SALES

030.01 In the case of lay-away or will-call sales (including those in which a deposit is made by the customer), retailers who maintain records on a cash basis must report cash collections on lay-away sales on the return for the period in which the cash is received.

030.02 All other retailers must report lay-away sales on the return for the period in which they are entered as a sale on the retailer's books.

030.03 If the deposit is forfeited by the customer, the seller shall include only the amount of the deposit received in his or her taxable receipts.

(Section 77-2703(1), R.S.Supp., 1992. January 24, 1993.)

REG-1-031 COIN-OPERATED MACHINES

031.01 General. For the purposes of this regulation, a coin-operated machine shall include all machines where coins or substitutes for coins are inserted to render the machine operable. Owners, other than lessors, of all coin-operated machines are the ultimate consumers of said machines and are required to pay sales or use tax on the purchase price.

A lessor who purchases coin-operated machines exclusively for the purpose of leasing or renting them shall furnish his or her supplier a Nebraska Resale or Exempt Sale Certificate, Form 13. The lessor shall collect and remit the tax on the gross lease or rental receipts. The receipts from leasing or renting a coin-operated machine are taxable even if the sales by the machine are exempt.

For purposes of imposing the sales tax on receipts from the operation of coin-operated machines, they are placed in one of three general categories: those which vend property, those which are operated for amusement, entertainment, or recreation, and those which provide other services.

031.02 Vending property. When property is sold by means of a vending machine, the person owning the property being sold through the vending machine is the retailer and is responsible for sales tax on the entire gross receipts therefrom regardless of how such receipts are divided.

031.02A The sales tax does not have to be separately stated and collected from the customer on sales of property through vending machines.

031.02B Where the retailer has machines at various locations, only one sales tax permit shall be required. Such retailer shall keep accurate records of the time and place of installation of each machine, the date of removal from any location, the amount of the gross receipts from each vending machine, and the gross receipts from the lease or rental of any vending machine.

031.02C The gross receipts therefrom include the state and applicable local option sales tax. The location of the machine determines the applicable local option sales tax. In determining the amount of sales tax to be remitted on vending machine sales, use the procedures described in 008.03 of Reg-1-008, Records.

031.03 For amusement. Coin-operated amusement machines shall include, but are not necessarily limited to, such devices as:

031.03A Pinball games;

031.03B Shuffleboard;

031.03C Bowling games;

031.03D Radio-ray rifle games;

031.03E Baseball games;

031.03F Football games;

031.03G Racing games;

031.03H Boxing games;

031.03I Coin-operated pool tables;

031.03J Video arcade games; and

031.03K Coin-operated musical devices.

031.04 Every owner or lessee of coin-operated amusement machines is required to be in compliance with the provisions of the Mechanical Amusement Device Tax Act, of the Nebraska Revised Statutes. Such compliance shall exempt such gross receipts from the sales tax which would or could otherwise apply. If the owner or lessee is not in compliance with the Mechanical Amusement Device Tax Act, the machines may be seized, and the owner will have to remit the sales tax on the receipts from the machines in addition to the other taxes, fines and penalties, (For more information see the Mechanical Amusement Device Regulations). Nothing in this regulation shall be construed as exempting the original purchase or lease receipts, as applicable, of such machines from the tax.

031.05 For other services. These machines do not sell property and are not for amusement but do other things such as provide blood pressures or weight. If the machines also provide fortunes or similar items they are amusement devices.

031.05A See Reg-1-048, Laundries and Dry Cleaners, regarding coin-operated laundry and dry cleaning devices.

031.05B See Reg-1-065, Telephone and Telegraph Communication Services, regarding the receipts from coin-operated telephones.

031.05C See Reg-1-099, Motor Vehicle Services, regarding the receipts from coin-operated car washes.

031.05D The gross receipts of machines for other services are exempt unless the services provided are otherwise taxable.

031.05E When taxable services are provided by a coin-operated machine, 031.02A and 031.02C apply to those machines.

(Sections 77-2703(1)(c) and 77-3005, R.R.S. 2003. October 1, 2003.)

REG-1-032 LEASED DEPARTMENTS

032.01 Where a retailer has leased certain of the departments in his or her business place to other persons for the purpose of selling property to consumers, each such lessee shall be required to secure a sales tax permit as a retailer. The lessee shall be responsible for the filing of separate tax returns and the payment of the tax due on its sales; provided, the lessee keeps separate books of account and makes his or her own collections on account of the sales.

032.02 If the retailer (lessor) keeps the books for the leased departments and makes collections on account of their sales, the lessor may, as agent for the lessee, make the required separate returns and pay the taxes due. The lessor cannot include the leased department on his or her combined sales tax return. The lessee shall not be relieved of his or her liability in the case the lessor fails to make the proper returns or fails to pay the taxes due.

(Section 77-2705(3) and (5), R.S.Supp., 1993. May 14, 1994.)

REG-1-033 TRANSIENT AND ITINERANT SELLERS

033.01 The requirement that any person must have a sales tax permit before he or she may lawfully sell property or services at retail in this state applies to all forms of retail selling, including sales made through stores; from private residences; at flea markets, fairs, or temporary booths; from trucks and wagons; by house-to-house canvass; by advertising through newspapers, radio, or television; or in any similar manner.

033.02 A distributor that uses mobile salespersons may enter into an agreement with the Nebraska Department of Revenue (Department) to collect and remit sales taxes for salespersons working for the distributor as independent contractors. When the distributor has entered into an agreement:

033.02A The individual sellers do not need sales tax permits; and

033.02B The distributor must record the retail price of each item sold and the location of each sale.

033.03 The promoter or operator of a trade show, craft show, flea market, or fair must be licensed as a retailer if:

033.03A The promoter and the sellers making sales at the event agree that the promoter will collect and remit the tax for those who do not have a sales tax permits. If the promoter and the seller enter into this kind of agreement, the seller is not required to obtain a sales tax permit; or

033.03B The promoter is making taxable sales.

033.04 Persons who sell property at retail from locations other than a store may be required to post a bond with the Department as a condition of obtaining a sales tax permit. The bond assures full compliance with the provisions of the Revenue Act, and that all sales taxes due are collected and remitted.

033.05 Transient and itinerant sellers who have obtained a sales tax permit must have the original or a copy of the permit in their possession and must display it upon request.

(Neb. Rev. Stat. §§ 77-2702.14, 77-2705(3), and 77-2713(1). June 24, 2017.)

REG-1-034 AUCTION AND CONSIGNMENT SALES

034.01 All auction and consignment sales of property are sales at retail and the auctioneer is a retailer who must collect and remit the tax on all sales except as follows:

034.01A If an auctioneer is an agent of a retail seller, then the seller or other agent of the seller is responsible for the collection and remittance of the tax on each transaction;

034.01B If another person acts as clerk for an auction sale and handles the money for the sale, then the clerk is the retailer and is responsible to collect and remit the tax on items sold; or

034.01C If the sale is otherwise exempt because of the nature of the item sold, the nature of the purchaser, or the intended use of the item, such sales are exempt and not taxable. See Reg-1-012, Exemptions.

034.02 All sales made by auctioneers or consignees from an auction house or any other place under the control of an auctioneer or consignee are taxable sales subject only to the exception in item 034.01C of this regulation or the exception for sales by religious organizations in Reg-1-091, Religious Organizations.

(Sections 77-2702.09, 77-2702.14, and 77-2704.35 R.S.Supp., 1993. May 14, 1994.)

REG-1-035 CONSUMPTION OF UNTAXED PROPERTY

035.01 Persons who take property originally purchased tax free with a resale certificate or from inventory (stock) for personal or business use, consumption, or gift, must report and pay a use tax on such property. Such persons must enter on their books the cost of all such property and pay the applicable tax on their purchase price of the property at the rate in effect at the time of use. The cost of those articles taken from stock should be reported on the applicable line of the Nebraska and Local Sales and Use Tax Return.

035.01A Retailers who use property, such as cellular telephones, satellite dishes, or DVRs, as an inducement to obtain signed service contracts for a third party service provider must pay consumer's use tax on the difference between the retailer's cost of the property and any amount received for such property.

035.02 Retailers of aircraft may, in lieu of paying the applicable tax on their purchase price of the aircraft used for personal or business purposes, elect to pay the tax on the gross receipts realized from the use of such aircraft. If such election is made, it shall be pursuant to the conditions set forth in Reg-1-067, Aircraft and Related Services.

035.03 Destruction or other disposition, for which no consideration is received, of property purchased for resale and subsequently determined to be unsalable is not considered to be personal or business consumption and is therefore not taxable.

035.03A However, disposition of such property is taxable if used as a gift or contribution by the owner. The tax is due on the original cost of the property.

035.04 Destruction of property for research and development or testing purposes is taxable.

(Sections 77-2706(3), and 77-2706.01, R.R.S. 2003, and section 77-2703(2), R.S.Supp., 2005. March 7, 2006.)

REG-1-036 DONATIONS, PRIZES, AND PROMOTIONAL GIVE-AWAYS

036.01 Donations. Donors are the consumers of any property purchased to be donated and the purchase of the property in Nebraska is taxable, unless an exemption otherwise applies. If a gift is delivered in Nebraska to either the donor or the donee, sales tax must be collected by the retailer from the donor.

036.01A If a person donates cash to an organization that is exempt from paying sales tax (sales tax exempt nonprofit), the sales tax exempt nonprofit can purchase property to be given away in a raffle or contest without paying or collecting sales tax.

036.01B Persons who purchase property that is donated to a sales tax exempt nonprofit are the consumers of the property donated and must pay sales tax on the purchase whether the property is delivered to the donor or to the sales tax exempt nonprofit.

036.01C If the donated property is a motor vehicle, the donor must pay use tax to the county treasurer based on the cost of the motor vehicle to the donor and the location of the donor.

036.02 Out-of-State Deliveries. Retailers who deliver property to either the donor or the donee at a location outside of Nebraska, are not required to collect sales tax.

036.03 Prizes Awarded by Sales Tax Exempt Nonprofits. Sales tax exempt nonprofits may purchase property to be awarded as prizes sales tax exempt. The recipient of the property that is awarded by the sales tax exempt nonprofit does not have to pay sales or use tax upon receiving the property. (Reg-1-090, Nonprofit Organizations, and Reg-1-014, Exempt Sale Certificate)

036.04 Motor Vehicles Awarded as Prizes. If the property awarded is a motor vehicle, sales tax is collected at the time the motor vehicle is purchased, donated, or registered in Nebraska, based on the purchase price, and the location of the nonprofit organization or winner. Reg-35-402 requires the nonprofit to have paid for the motor vehicle in full prior to the date on which the winners will be determined, regardless of whether or not the nonprofit takes title to the motor vehicle. This is shown in the examples in subsections A through C below. Use tax may also be due if there is a later transfer of title without registration. (Reg-1-020, Motor Vehicles)

036.04A For example, if a sales tax exempt nonprofit purchases and takes title to a motor vehicle to be awarded to the winner of a raffle or contest, the winner does not owe sales tax when registering the motor vehicle, because the nonprofit is exempt from sales tax and the winner did not purchase the motor vehicle. The sales tax exempt nonprofit must provide the winner a completed Nebraska Sales/Use Tax and Tire Fee Statement, Form 6, with exemption block 1 or 10 checked, and include its sales tax exemption number. The winner then provides a copy of the Form 6 to the county treasurer showing the tax exempt status of the sales tax exempt nonprofit at the time the winner registers the motor vehicle.

036.04B A nonprofit organization that is not sales tax exempt which purchases and takes title to a motor vehicle that will be awarded to the winner of a raffle or contest must pay the sales tax to the county treasurer based on the business location of the nonprofit organization. The winner does not owe additional sales tax at the time of registration because the winner did not purchase the motor vehicle. The nonprofit organization must provide the winner a completed Nebraska Sales/Use Tax and Tire Fee Statement, Form 6, with exemption block 10 checked. The winner then provides a copy of the Form 6 to the county treasurer at the time the winner registers the motor vehicle.

036.04C If a dealer donates a motor vehicle to a nonprofit which awards the motor vehicle as a prize in a raffle or contest, the dealer must pay sales or use tax to the county treasurer. The tax is calculated based on the dealer's cost of the motor vehicle and its business address. The winner owes no additional sales tax at the time of registration because the winner paid nothing for the motor vehicle. This applies regardless of whether or not the nonprofit is sales tax exempt.

036.05 **Promotional Give-Aways.** The sale of property to be given away for advertising or promotional purposes is taxable. If property is purchased for resale and subsequently given away, the purchaser must include the cost of the property on the use tax return and remit the use tax due.

036.06 **Pickle Cards, Lottery Tickets, and Raffle Tickets.** Sales of pickle cards, lottery tickets, and raffle tickets to individual participants are sales of a chance to win and are exempt from sales and use taxes. The sale of the pickle cards or tickets to an organization is taxable, unless it is a sales tax-exempt organization or a sales tax-exempt governmental unit. (Reg-1-090 Nonprofit Organizations, and Reg-1-093, Governmental Units)

036.07 **Nebraska Lottery Tickets.** Sales of Nebraska Lottery tickets to individual participants or to Lottery Game Retailers are exempt from sales and use taxes.

(Neb. Rev. Stat. §§ 77-2701.16, 77-2703, 77-2703.01, 77-2704.12, 77-2704.38, 77-2705, and 77-2706(3). June 24, 2017.)

REG-1-037 TRADING STAMPS, COUPONS, CERTIFICATES, VOUCHERS, REIMBURSED PRICE REDUCTIONS, AND GROUP DISCOUNTS

037.01 Redeeming Trading Stamps. When trading stamps are redeemed for merchandise, the transaction is a retail sale and is subject to sales tax. The tax is computed on the fair market value of the merchandise transferred in exchange for the stamps. The retailer may purchase redemption merchandise for resale. No sales tax is due when stamps are redeemed for cash rather than for merchandise.

037.02 Purchasing Trading Stamps. If a retailer purchases trading stamps to distribute to customers, the transaction is not considered a purchase of property and no sales tax is due. The stamp distributor who sells the stamps to the retailer must pay sales or use tax on its purchase of the stamps.

037.03 Coupons, Reimbursed Price Reductions, or Group Discounts When Reimbursed by a Third Party. When coupons, reimbursed price reductions, or group discounts are accepted by a retailer as some or all of the selling price of any taxable item, and the retailer receives services, payment, or reimbursement from a third-party, (for example, the manufacturer, distributor, or an unrelated person), the value of the coupons, reimbursed price reductions, or group discounts cannot be subtracted from the selling price when determining gross receipts.

037.03A Reimbursed Price Reductions or Group Discounts. If the purchaser identifies himself or herself to the retailer as a member of a group or organization entitled to a price reduction or discount, and the retailer receives payment or reimbursement for granting the price reduction or discount from a third party, the amount of the payment or reimbursement is part of the selling price of the item when determining gross receipts.

037.04 Coupons, Price Reductions, or Group Discounts When Not Reimbursed by a Third Party. When coupons or group discounts are issued, granted, or accepted by the retailer as part of the selling price of any taxable property, and the retailer does not receive any services, payment, or reimbursement from a third-party, the coupons, certificates, vouchers, or group discounts are considered cash discounts, and the amount may be subtracted from the selling price of the property when determining gross receipts.

037.05 Certificates or Vouchers. The sale of gift certificates, promotional certificates, or vouchers is not taxable.

037.05A Redemption of Promotional Certificates or Vouchers. When gift certificates, promotional certificates, or vouchers are redeemed in whole or in part, they are treated as if cash were used up to the face value of the certificate or voucher, even if the retailer or a third party originally sold it for less than face value.

037.05B If a retailer contracts with a third party to market promotional certificates or vouchers to the public in exchange for making purchases from the retailer (for example, Groupon, Deal of the Day, or a fundraising group), the face value of the promotional

certificate or voucher is consideration for the sale if it is redeemed by the retailer. The gross receipts of the retailer is the full retail value of the property sold regardless of the amount paid by the customer to the third party.

(Neb. Rev. Stat. §§ 77-2701.16 and 77-2701.35. June 24, 2017.)

REG-1-038 FINANCIAL INSTITUTIONS

038.01 The tax applies to the purchase, lease or rental of property or services by financial institutions for its own use or consumption. Financial institutions include national banks as well as state-chartered institutions.

038.02 A financial institution which engages in the sale, lease, or rental of property or services to consumers must register as a retailer, collect, and remit the tax due to the Department of Revenue. Taxable sales by financial institutions include, but are not necessarily limited to, sales of checkbooks, silverware, pictures, savings or piggy banks, and repossessed merchandise. The gross receipts from the lease or rental of property by a financial institution are also taxable. See Reg-1-018, Rent or Lease of Tangible Personal Property, for the taxation of capital or operating leases. Safe-deposit boxes are not considered tangible personal property and accordingly their rental is not taxable.

038.03 Imprinted (personalized) checks sold by banks to customers are taxable. If such checks are furnished to the customers at cost, then the bank may either purchase the checks for resale and collect the applicable tax from its customers or pay the tax to its suppliers. If checks are issued to customers for a fixed charge per check which represents a service charge on the accounts (PAYC), such charge is not taxable to the customer, but the bank is the consumer of such checks and must pay tax upon their purchase price.

(Sections 77-2702.07, 77-2703(2), and 77-2705(3), R.S.Supp., 1993. May 14, 1994.)

REG-1-039 PROMOTING OR ADVERTISING THAT THE TAX IS ABSORBED IS PROHIBITED

039.01 Retailers are required to charge the consumer or user the full amount of the state and local sales tax. The retailer must collect the tax as an item separate and distinct from the selling price, except that:

039.01A The Tax Commissioner by regulation may permit retailers of certain classifications of property to include the tax imposed in the total sales price and state that the tax is included.

039.01A(1) Regulations which authorize retailers to include the tax in the total sales price of the property include: Reg-1-031, Coin-Operated Machines; Reg-1-040, Alcoholic Liquors Consumed on the Premises; Reg-1-044, Admissions; and Reg-1-083, Prepared Food and Beverage Service.

039.01A(2) Regulations which authorize these retailers to include the tax in the price of a specific type of property or service must be adopted prior to advertising that the tax is included in the sales price of the property.

039.01B Public utilities furnishing sewer, water, electricity, and gas may elect to absorb the tax, remit the amount of tax based upon the total charges made to taxable consumers, and include a statement on the bill to the effect that the tax has been absorbed by the utility. (See Reg-1-066, Sewer and Water; and Reg-1-089, Energy Source Utility Exemption)

039.02 Unless authorized by regulation, it is a Class IV misdemeanor for a retailer, directly or indirectly, to assert, promote, advertise, imply, or represent to the public in any manner that the tax or any part of the tax will be assumed, absorbed, or refunded by the retailer, or that it will not be added to the purchase price.

039.03 The following are examples of prohibited statements that cannot be included in any advertising or other promotional communication:

039.03A Tax-free sale;

039.03B Pay no sales tax;

039.03C Purchases will be discounted by the amount of the sales tax;

039.03D Sales tax stimulus sale;

039.03E We will pay your sales tax; and

039.03F Tax credit sale.

(Neb. Rev. Stat. §§ 77-2701.16, 77-2703(1)(b) and (c), and 77-2713(5). June 24, 2017.)

REG-1-040 ALCOHOLIC LIQUORS CONSUMED ON THE PREMISES

040.01 The sales tax does not have to be separately stated and collected from the customer on sales of beverages and snack foods which are consumed on the premises of the licensed alcoholic liquor retailer. Retailers who do not separately state the sales tax shall determine their taxable receipts in accordance with the procedure set out in paragraph 008.03 of Reg-1-008, Records.

040.01A The tax must be separately stated and collected on the sales of sandwiches, hot foods other than hot beverages, and meals.

040.02 Including the tax in the sales prices does not exempt the retailer from the payment of the applicable tax on the gross receipts from those sales. The retailer is not prohibited from separately stating and collecting the tax if he or she so desires.

(Section 77-2703(1)(c), R.S.Supp., 1993. May 14, 1994.)

REG-1-041 Repealed

REG-1-042 Repealed.

REG-1-043 CONTAINERS

043.01 Container means the materials used to contain, cover, wrap, or package a product for sale, shipment, or delivery. Containers include boxes, bottles, cans, bags, sacks, and wrapping materials, such as paper, tape, string, and labels. Containers designed for use on transportation equipment are discussed in Regulation 1-069, Common and Contract Carriers.

043.02 Containers are either returnable containers or nonreturnable containers.

043.02A Returnable container means a reusable container that is normally returned to the seller by the buyer of the contents of the container. A returnable container includes any container on which there is a deposit that is refunded to the purchaser of the contents when the container is returned.

043.02B Nonreturnable containers are all containers that are not returnable containers.

043.03 Returnable containers are taxable when sold or rented to the person who will place the contents in the container.

043.03A The collecting or refunding of deposits on returnable containers is exempt.

043.04 Empty nonreturnable containers are exempt if purchased by a person who will fill the container and sell the contents and the container together.

043.04A Empty nonreturnable containers are taxed if purchased by a person who will not sell the contents or will remove the contents from the container before sale.

043.05 Any charge for a container, for wrapping an item, or filling a container, is taxable, except if the contents are sold at the same time and the contents are exempt, the charge is exempt.

043.05A The person charging for the container, for wrapping, or for filling may purchase the container or the materials used for resale.

(Sections 77-2704.24 and 77-2704.47, R.R.S. 2003; and Pepsi Cola Bottling Co. v. Peters, 189 Neb. 271, 202 N.W.2d 582 (1972). April 12, 2005.)

REG-1-044 ADMISSIONS

044.01 Definitions.

044.01A Access to a place or location means the right to be in the place or location for purposes of amusement, entertainment, or recreation at a time when the general public is not allowed at that place or location absent the granting of the admission.

044.01B Admission means the right or privilege to have access to or use a place or location where amusement, entertainment, or recreation is provided to an audience, spectators, or the participants in the activity. Admission includes memberships that grant access to a place or location, but do not include all the participation rights of belonging to the organization including, but not limited to the right to: hold office; vote for officers; and change the policies of the organization.

044.01B(1) Admission does not include a membership which grants all the participation rights of belonging to an organization, including, but not limited to: voting for officers; holding an office; and having the ability to change the policies of the organization.

044.01B(2) Admission does not include a charge for leasing or renting a location, facility, or part of a location or facility.

044.01B(3) Admission does not include a charge for practice or instruction.

044.01C Entertainment means amusement or diversion provided to an audience or spectators by performers.

044.01D Instruction means teaching skills necessary to perform a sport or activity proficiently.

044.01E Lease or rental of a location, facility, or part of a location or facility means that the owner or lessor:

044.01E(1) Cedes control of the location, facility, or part of the location or facility for a period of time; and

044.01E(2) Cedes the right to determine who is granted access to the location, facility, or part of a location or facility to the lessee for the period of the lease or rental.

044.01F Practice means an organized time for instruction, training, or rehearsing skills to become proficient in the sport or activity.

044.01G Recreation means a sport or activity engaged in by participants for purposes of refreshment, relaxation, or diversion of the participants. Recreation includes competition unless it is a professional competition. Whether a competition is professional or recreational is determined based on the nature of the event as a whole and not the professional status of any particular competitor.

44.02 Sales of Admissions Subject to Sales Tax. The gross receipts from selling admissions, including surcharges, are subject to sales tax. This includes season or subscription tickets for specific occasions or for multiple occasions, either limited or unlimited, during a period of time.

044.02A Cover charges, minimum charges, charges for reservations, or any similar charges are charges for admissions.

044.02B Charges by an organizer of a recreational sports league or competition to teams or individuals to participate where the games or competitions occur in locations under the control of the organizer at the time the games or competitions occur are admissions subject to sales tax unless an exemption applies.

044.02B(1) Charges to teams to participate in the league or competition include mandatory gate fees charged in lieu of collecting gate admissions to spectators and other mandatory charges to teams or participants.

044.02B(2) Charges by the team to individuals who will be participating are not admissions, unless the charge is by the organizer of the league. For example, amounts charged by a city recreation department to teams to participate in a city-organized adult softball league are taxable admissions, but the amount the teams collect from the individuals to cover team expenses, including the entry fee, are not.

044.02C When an admission to an activity or a membership constituting an admission is combined with soliciting a contribution, the portion or the amount charged representing the fair market price of the admission is subject to sales tax. The fair market value is determined according to Reg-1-090.09, Nonprofit Organizations.

044.02D Charges that are not admissions.

044.02D(1) Charges by an organizer of a recreational sports league or competition where the games or competition occur in locations that are not under the control of the organizer during the competition are not admissions. Examples include running events conducted on public streets and trails.

044.02D(2) Charges for participating in a workshop, seminar, class, convention, business meeting, or similar events primarily for training or educational purposes are not admissions.

044.02D(3) Charges for operating a coat or hat checkroom.

044.02D(4) Charges for operating a summer camp or a day camp are not admissions.

044.03 Places of Amusement, Entertainment, or Recreation. Places where amusement, entertainment, or recreation are typically provided to an audience, spectators, or participants in the activity include, but are not limited to: amusement parks; archery ranges; art exhibits; auditoriums; baseball parks; bowling alleys; cabarets; country clubs; dance halls; driving ranges; fairgrounds; fishing ponds; stadiums; golf courses; gymnasiums; health clubs; miniature golf courses; movie theaters; museums; night clubs; parks; race tracks; racquetball courts; skating rinks; batting cages; skeet ranges; street fairs; swimming pools; superslides; theaters; trap ranges; and toning salons.

044.03A Owners or operators who charge individuals for access to these places are selling admissions subject to sales tax, even if some of the individuals use the facility for practice or instruction.

044.03B If the owner or operator sets aside certain times for practice or instruction, charges to the students during these times are not admissions. Leasing or renting one of these places, in whole or in part, for purposes of practice or instruction conducted by the lessee, is not an admission.

044.03C To be considered practice or instruction, access must be limited to those participating in the practice or instruction.

044.04 Property Purchased by the Owner or Operator. The owner or operator of a place of amusement, entertainment, or recreation is the consumer of any property purchased, leased, or rented for use in the business of providing amusement, entertainment, or recreation. The owner or operator must pay sales or use taxes on these purchases, leases, or rentals.

044.04A If a separate charge, in addition to the admission, is made for renting property such as bowling shoes, roller skates, stadium seat cushions, etc., the gross receipts from the rental of this property are taxable.

044.04B The owner or operator may purchase property to be used solely for rental or lease using a resale certificate.

044.05 Sales Tax May Be Included in the Price Charged. The sales tax may be included in the total admission price. If the sales tax is included in the total admission price, a statement that the sales tax is included in the price must appear on the admission ticket, or on a sign posted in a conspicuous place where the admissions are sold.

044.06 Applicable Rate and Location. The sales tax on admissions is calculated at the rate in effect on the date of the sale at the place where the admission will be granted.

044.06A If a single charge is made to cover admission to more than one attraction under the same management, the sales tax is computed on the basis of a single charge at the rate applicable at the business location of the retailer.

044.06B If the admission to each attraction can be purchased separately, the sales tax is computed on each charge at the rate applicable at the location of each attraction; or on the total of the separate charges at the rate applicable at the business location of the retailer.

044.07 **Unused Tickets.** No refund or credit of the sales tax is allowed because an admission was not used, unless the selling price of the ticket was also refunded.

044.08 **Ticket Resellers.** Admissions cannot be resold because the second seller does not have the right to grant or deny access to the place or location. Ticket resellers are providing a nontaxable service.

044.09 **Exemptions.**

044.09A Admissions charged by elementary or secondary schools are exempt.

044.09B Admissions charged by school districts, student organizations, or parent-teacher associations to an event or activity held in an elementary or secondary school during the regular school day, or at an approved function of the school, are exempt. Admissions charged by the Nebraska School Activities Association, athletic or academic conferences, or similar organizations that have been approved by the elementary or secondary schools, are exempt.

044.09C Admissions to political fund-raising events by ballot question committees, candidate committees, independent committees, or political party committees, as defined in the Political Accountability and Disclosure Act, or committees for candidates for federal office, are exempt.

044.09D Amounts charged by political subdivisions or organizations that are exempt from income taxes under § 501(c)(3) of the Internal Revenue Code of 1986, as amended, (IRC) to participate in youth sports events, youth sports leagues, or youth competitive educational activities are exempt.

044.09D(1) Competitive educational activity means a tournament or a single competition that occurs over a limited period of time annually or intermittently where the participants compete in an activity related to an intellectual field.

044.09D(2) Sports event means a tournament or a single competition that occurs over a limited period of time annually or intermittently where the participants engage in a sport.

044.09D(3) Sports league means an organized series of sports competitions taking place over several weeks or months between teams or individuals that are members of the league.

044.09D(4) Youth sports event, youth sports league, or youth competitive educational activity means an event, league, or activity that is restricted to participants who are less than 19 years of age.

044.09E Charges for participants in any activity provided by a nonprofit organization that is exempt from income tax under IRC § 501(c)(3), which conducts statewide sport events with multiple sports for both adults and youth are exempt.

044.09F Charges for participants in any activity provided by a nonprofit organization that is exempt from income tax under IRC § 501(c)(3), which is affiliated with a national organization, primarily dedicated to youth development and healthy living, and which offers sports instruction and sports leagues or sports events in multiple sports are exempt.

044.09G The exemptions in Reg-1-044.09D through 044.09F include any separately-stated charges to teams or participants that must be paid in order to compete.

044.09G(1) For example, if an organization described in Reg-1-044.09E or 044.09F charges an entry fee to teams to compete in a youth softball or baseball tournament, and also charges each team a separate, mandatory “gate fee” in lieu of charging admissions to spectators, both the entry fee and the gate fee are considered charges to participate and are exempt.

044.09G(2) However, if the organization charges an entry fee, but also allows teams to purchase tournament passes which allow spectators to enter the venue, and the teams may purchase as many passes as they wish or no passes at all, the charges for the tournament passes are not considered charges to participants and are not exempt. The IRC § 501(c)(3) organization must collect, report, and remit sales tax on sales of the tournament passes.

044.09H Beginning January 1, 2016, admissions and memberships to a nationally accredited zoo or aquarium operated by a public or nonprofit corporation primarily for educational, scientific, or tourism purposes are exempt.

044.10 The gift of an admission is exempt. The donor must pay sales tax on any payments made to obtain the admission that was given away.

(Neb. Rev. Stat. §§ 77-2701.16, 77-2701.32, 77-2701.55, 77-2703(1), 77-2704.10 , and 77-2704.63; 26 U.S.C. § 170(l), Berrington Corp. v. Nebraska Department of Revenue, 277 Neb. 765, 765 N.W.2d 448, 2009, The Governors of the Knights of Ak-Sar-Ben v. Department of Revenue, Doc. 352, Pg. 148 (Lancaster Co. Dist. Ct., Dec. 27, 1984); and Attorney General's Opinion No. 88, dated 11/17/69. June 24, 2017.)

REG-1-045 MOTION PICTURE FILM, VIDEOTAPE, AND PROGRAMMING

045.01 Except as provided in paragraph 045.02 and 045.03, sales and use tax applies to the gross receipts from the sale or lease of entertainment properties, including videotape, digital goods, motion picture film, satellite programming, and satellite signal descrambling or decoding devices. Gross receipts includes the total amount charged for entertainment property including but not limited to any license, royalty, franchise, broadcast fee, or other method establishing the charge.

045.02 Sales and use tax is not applicable to leases or rentals of entertainment properties to theaters, or other exhibiting enterprises, where the admission to the showing or the charge to view is taxable.

045.03 Sales and use tax does not apply to the sale, lease, license, rental, or use of property or digital goods containing copyrighted material for rebroadcast by a radio or television station to the general public if the purchaser is operating under a certificate from the Federal Communications Commission.

(Sections 77-2701.16, 77-2701.34, 77-2701.50, 77-2701.51, 77-2701.52, and 77-2701.53, R.R.S., 2009. June 6, 2011.)

REG-1-046 HOTELS, LODGINGS, AND ACCOMMODATIONS

046.01 The sales tax applies to the receipts from any room or rooms, lodgings, or accommodations furnished by any hotel, motel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished for a consideration except licensed hospitals and nursing homes. The terms “rooms, lodgings, or accommodations” do not include camp sites, ballrooms, banquet rooms, reception rooms, meeting rooms, or other rooms which do not constitute a sleeping facility. Recreational vehicle park services are taxable. (Reg-1-103, Recreational Vehicle Park Services)

046.01A Charges to guests or tenants for cable or satellite television are taxable.

046.01A(1) The hotel, etc., may purchase the cable or satellite service, or separate channels without the payment of tax if the channels or the service is only available for an additional charge.

046.01B Charges to guests or tenants for intrastate telephone service are taxable. The hotel cannot buy telephone service for resale, except when the hotel uses no part of the telephone service.

046.02 Rooms, lodging, or accommodations supplied to the same tenant for a period of thirty (30) continuous days or more and the occasional rental for less than thirty (30) days of dormitories or facilities regularly used to house students in a facility operated by an educational institution established or recognized under Chapter 79 or 85 of the Nebraska Revised Statutes, are exempt from the sales and use tax.

046.03 Hotels, etc., must remit sales tax on the gross receipts from the sale of property or services at retail including the sale of meals. All property or services purchased by hotels, etc., are taxable except food, liquor, and like items that are actually resold. Sales to hotels, etc., of furniture, towels, soap, bedding, or other articles of property are regarded as sales for final use or consumption to which the sales tax applies.

046.04 The term accommodations shall include cabin trailers and mobile homes which have been either set up as a dwelling according to the local building codes or are permanently annexed to real estate.

046.05 Employees of exempt organizations or exempt governmental entities are taxable when they personally pay for accommodations, even if the employee is on travel orders and will be reimbursed for expenses incurred by the exempt organization or governmental entity.

(Sections 77-2702.14 and 77-2702.15, R.R.S. 2003. October 1, 2003.)

REG-1-047 BARBER AND BEAUTY SHOPS

047.01 Barber and beauty shop operators are primarily rendering personal services not subject to the sales tax. They are the consumers of the materials used in their business when rendering such personal services and are required to pay the tax on all these purchases.

047.02 When barber and beauty shop operators sell property they are required to register, collect and remit the tax on such sales directly to the Department of Revenue.

047.02A Operators may purchase for resale the items that will be sold.

047.03 Operators will pay the use tax on any of the items purchased for resale that are used in rendering personal services.

047.03A Operators who charge their employees or independent contractors working in their shop for materials will collect sales tax on the amount charged.

(Sections 77-2702.13, and 77-2703(2), R.S.Supp., 1993. May 14, 1994.)

REG-1-048 LAUNDRIES AND DRY CLEANERS

048.01 All property and services purchased by laundries and dry cleaners for use in furnishing laundry and dry cleaning services are taxable. Services rendered by such persons in returning clothing and other items to their original condition are restoration services and are not taxable.

048.02 The sales tax does not apply to receipts from coin-operated laundry and dry cleaning devices. The sales or use tax applies to all property purchased by coin-operated laundries to be used in the furnishing of laundry services, including machinery, equipment, repair parts, materials, and supplies.

048.03 Electricity and other fuels purchased for a laundry or dry cleaner, or for coin-operated laundry and dry cleaning devices is used in restoration and not in processing and is therefore taxable.

048.04 When laundry and dry cleaner operators go beyond the rendition of restoration services and make sales of clothing, bleach, soap, or other property, and alter, repair, or modify garments, they must become licensed to collect and remit the applicable tax.

(Sections 77-2702.13, 77-2703(2), and 77-2704.15, R.R.S. 2003. Uniservice v. State, Doc. 402, Pg. 150 (Lancaster Co. Dist. Ct., 1987).October 1, 2003.)

REG-1-049 LINEN AND CLOTHING SUPPLIERS

049.01 The gross receipts realized from rental of or furnishing of tangible personal property, such as coats, caps, aprons, dresses, uniforms, smocks, towels, linens, rugs, and diapers under an agreement which provides for their periodic cleaning or laundering, are taxable.

049.02 Persons providing this service are retailers and shall issue resale certificates to their suppliers for the clothing or other items which are furnished to their customers under these agreements. Materials, equipment, electricity and other fuels, and supplies consumed by the retailer in providing this service, such as bags or other packaging, bleaches, softeners, and detergents, are taxable.

(Sections 77-2702.14, and 77-2703(1) and (2), R.S.Supp., 1992. January 24, 1993.)

REG-1-050 MEDICINES AND MEDICAL EQUIPMENT

050.01 The following definitions apply to this regulation and Reg-1-051, Physicians and Dentists. The Nebraska Department of Revenue will rely upon determinations of the Nebraska Medical Assistance Program operated by the Nebraska Department of Health and Human Services (Medicaid) to determine if specific equipment, supplies, or devices are eligible for coverage under Medicaid.

050.01A Appropriate for use in the home means the equipment can be used or operated by a person without specialized training.

050.01B Drug means any compounds, substances, or preparations, other than grooming and hygiene products such as soap, toiletries, and cosmetics, food and food ingredients, dietary supplements, or alcoholic beverages which are:

050.01B(1) Recognized in the official U.S. Pharmacopoeia, official U.S. Homeopathic Pharmacopoeia, or official National Formulary;

050.01B(2) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

050.01B(3) Intended to affect the structure or function of the body.

050.01C Durable medical equipment means equipment, including repair and replacement parts, that:

050.01C(1) Can withstand repeated use;

050.01C(2) Is primarily and customarily used to serve a medical purpose;

050.01C(3) Is not generally useful to a person in the absence of illness or injury; and

050.01C(4) Is appropriate for use in the home.

050.01C(5) Durable medical equipment does not include exercise equipment, recliners, vibrators, hot tubs, or monitoring devices unless the monitoring devices are necessary to use other durable medical equipment.

050.01D Home medical supplies means supplies primarily and customarily used to serve a medical purpose that are appropriate for use in the home and are not generally useful to a person in the absence of illness or injury. Home medical supplies do not include items for personal comfort, hygiene, or cosmetic purposes, or any drugs.

050.01E Mobility enhancing equipment means equipment, including repair and replacement parts, which:

050.01E(1) Is primarily and customarily used to provide or increase the ability to move from one place to another;

050.01E(2) Is not generally used by persons with normal mobility; and

050.01E(3) Is appropriate for use either in a home or a motor vehicle.

050.01E(4) Mobility enhancing equipment does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer, for example, power steering, power brakes, automatic door locks, or running boards.

050.01F Oxygen equipment means oxygen cylinders, cylinder transport devices, including sheaths and carts, cylinder studs and support devices, regulators, flowmeters, tank wrenches, oxygen concentrators, liquid oxygen base dispensers, liquid oxygen portable dispensers, oxygen tubing, nasal cannulas, face masks, oxygen humidifiers, and oxygen fittings and accessories.

050.01G Over-the-counter drug means a drug containing a label as required by 21 C.F.R. 201.66. The over-the-counter drug label includes a drug facts panel or a statement of the active ingredients with a list of those ingredients contained in the compound, substance, or preparation.

050.01H Prescription means an order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a practitioner licensed under the Uniform Credentialing Act.

050.01I Prosthetic device means replacement, corrective, or supportive devices worn on or in the body to replace a missing portion of the body, prevent or correct physical deformity or malfunction, or support a weak or deformed portion of the body. Prosthetic devices include any supplies used with prosthetic devices and any repair or replacement parts.

050.02 Sales of mobility enhancing equipment for human use are exempt from sales and use tax when supported by a prescription issued by a practitioner licensed under the Uniform Credentialing Act. Taxation of mobility enhancing equipment that is annexed to real estate will be governed by the selected option of the contractor annexing the mobility enhancing equipment. (Reg-1-017, Contractors).

050.02A Option 1 contractors may accept a Nebraska Resale or Exempt Sale Certificate, Form 13, and a copy of the prescription to exempt the equipment or materials from sales tax.

050.02B Option 2 and Option 3 contractors are the consumers of all mobility enhancing equipment that is purchased and annexed to real estate. Option 2 and Option 3 contractors must pay tax on this equipment and materials, and do not collect sales tax from their customers. Option 2 and Option 3 contractors cannot accept a Form 13 or a prescription from their customer to exempt the equipment or materials from tax.

050.03 Sales of home medical supplies, oxygen, oxygen equipment, prosthetic devices, and durable medical equipment are exempt from sales and use tax if the home medical supplies, oxygen, oxygen equipment, prosthetic devices, or durable medical equipment are:

050.03A Sold for a human patient's use;

050.03B Sold pursuant to a prescription issued by a practitioner licensed under the Uniform Credentialing Act for the treatment of a medical condition; and

050.03C Either;

050.03C(1) Paid for or eligible for coverage under Medicaid, or

050.03C(2) Transferred to the patient during a procedure which is paid for or eligible for coverage under Medicaid, regardless of whether or not the patient is eligible for assistance.

050.04 Sales of drugs for human use, except over-the-counter drugs, are exempt from sales and use tax when supported by a prescription issued by a practitioner licensed under the Uniform Credentialing Act.

050.04A Over-the-counter drugs that can be purchased without a prescription are taxable even if they are prescribed by a practitioner licensed under the Uniform Credentialing Act.

050.04B All illegal drugs are taxable.

050.05 Sales of insulin for human use with or without a prescription are exempt from sales tax.

050.06 Purchases by physicians and dentists are discussed in Reg-1-051, Physicians and Dentists.

050.07 Purchases by hospitals, clinics, or health care practitioner facilities that are not sales tax-exempt are taxed in the same manner as purchases by physicians and dentists. Hospitals, clinics, or health care practitioner facilities must maintain records showing that prescriptions were issued for items transferred without any tax paid or collected.

050.08 Retailers making sales of drugs, other than over-the-counter drugs, durable medical equipment, home medical supplies, prosthetic devices, or mobility enhancing equipment, must keep the prescription sales records segregated from other sales records.

050.09 Charges which are billed under the Nebraska Medical Assistance Program operated by the Nebraska Department of Health and Human Services and are paid by the State of Nebraska, are deemed to be purchases by the state and are exempt from sales tax.

(Neb. Rev. Stat. §§ 77-2704.02, 77-2704.09, 77-2704.12 and 77-2704.15. June 24, 2017.)

REG-1-051 PHYSICIANS AND DENTISTS

051.01 Charges for professional services rendered by physicians and dentists are not taxable.

051.02 Physicians and dentists are considered consumers of property and services they purchase for use in the practice of their professions.

051.02A Sales of drugs, except over-the-counter drugs, prosthetic devices, durable medical equipment, mobility enhancing equipment, and home medical supplies, are exempt from sales tax if purchased by a physician or dentist to be prescribed, dispensed, administered, or transferred to an individual human patient during the treatment of the patient, if the purchase by the patient would be exempt under Reg-1-050, Medicines and Medical Equipment.

051.02B Sales of supplies that are used in examinations or diagnosis, and test or diagnostic equipment, are taxable when purchased or leased by the physician or dentist for use in his or her practice or for use by more than one patient.

051.02C Sales of durable medical equipment, mobility enhancing equipment, and home medical supplies that are not transferred to a specific patient are taxable when purchased by the physician or dentist.

051.02D Sales of equipment, tools, supplies, software, or other technology necessary to use durable medical equipment, prosthetic devices, supplies, mobility enhancing equipment, or home medical supplies are taxable.

051.03 When physicians or dentists sell property separately from treating patients, they are required to collect the tax on these sales or maintain records in a location separate from confidential patient records, showing the sales were exempt from sales tax.

051.04 Under Nebraska law, procuring, furnishing, donating, processing, distributing, or using human whole blood, plasma, blood products, blood derivatives, and other human tissues such as corneas, bones, or organs for the purpose of injecting, transfusing, or transplanting any of them in the human body is providing a service and not a sale of property subject to sales or use taxes; whether or not any payment is received.

051.05 Charges for copies of medical records are taxable except for:

051.05A Medical records provided to the patient or a person holding that patient's power of attorney for health care, defined in Neb Rev. Stat. §§ 30-3401 through 30-3432; or

051.05B Medical records sold to Medicare, Medicaid, or an entity that is exempt from sales and use tax.

051.06 The definitions found in Reg-1-050.01 apply to this regulation.

(Neb. Rev. Stat. §§ 71-4001, 77-2704.09 and 77-2704.59. June 24, 2017.)

REG-1-052 FLORISTS

052.01 Charges by a florist to his or her customers for the sale and delivery of flowers, wreaths, or other floral products are taxable when the items sold are delivered by the florist to points within the State of Nebraska, or when the florist receiving the order instructs another florist to make the delivery.

052.01A When the florist receiving the order makes the delivery, the tax shall be collected at the appropriate rate, including local option sales tax, for the delivery location.

052.01B When another florist makes the delivery, the florist receiving the order from the customer will collect the tax at the rate, including local option tax, for the location where the order was taken.

052.02 The sales tax applies to amounts charged by florists who receive orders for the delivery of flowers, wreaths, etc., and instruct other florists to make the delivery. The sales tax does not apply to separate charges made by the florist for transmitting the instructions.

052.03 The tax does not apply to amounts received by Nebraska florists who make deliveries in this state pursuant to instructions received from other florists.

052.04 Wires, stems, vases, or other property which become a component part of a finished “arrangement” are not taxable when purchased by the florist.

(Section 77-2704.11, R.S.Supp., 1992. January 24, 1993.)

REG-1-053 FUNERAL DIRECTORS AND UNDERTAKERS

053.01 Funeral directors and undertakers are considered to be in the dual capacity of rendering services and selling property. Sales tax attaches to such sales of property and shall apply as set out in this regulation.

053.02 Funeral directors or undertakers are considered to be purchasing for resale such items as caskets, vaults, and clothing, and accordingly should furnish their suppliers of such items with a resale certificate. However, funeral directors or undertakers are considered consumers of embalming fluid, cosmetics, chemicals, office equipment, funeral home furnishings, advertising calendars, booklets, motor vehicles, embalming instruments, grave equipment, stretchers, and baskets. The applicable tax must be collected by the supplier and remitted to the Department of Revenue.

053.02A When a funeral director or undertaker is employed to prepare the remains and place it in a casket for subsequent shipment outside of this state, sales of caskets, clothing, and similar items, are taxable as the delivery has taken place when the remains were placed in the casket.

053.02B When remains are shipped into this state for burial purposes and a vault is purchased from the Nebraska funeral director, sales tax applies on the charge for the vault.

053.03 No sales tax shall be charged on burials for which payment is made directly to the funeral director or undertaker by the State of Nebraska or any county.

053.04 If separate charges are made for the sale of property and for required services, sales tax shall be collected only on the sale of property. In such cases, tax would not apply to charges such as embalming and care of the remains, use of the hearse, limousine, grave opening, purchase of a lot, remuneration to the minister and musicians, use of the church, or press notices.

053.04A Where the funeral director or undertaker purchases flowers, sales tax must be paid by the funeral director or undertaker to the florist unless the funeral director or undertaker separately charges for the flowers. When the separate charge is made, the charge is taxable and the funeral director or undertaker can purchase the flowers for resale.

053.05 Where funeral directors and undertakers do not segregate the charges for the sale of property from the sale of required services, they shall collect and report the tax based on fifty percent (50%) of the total charges. The sale of outside vaults and clothing are not considered a part of required services and sales tax shall apply with respect to 100% of the total from such sales. Charges for all other nonrequired taxable services are excludable from the tax base prior to computation on the 50% basis. Charges for grave openings, purchases of a lot, payments to the minister and musicians, use of the church, and press notices are examples of charges for nonrequired services.

(Section 77-2703(1)(k), R.S.Supp., 1993. May 14, 1994.)

REG-1-054 NEWSPAPERS

054.01 Sales of newspapers, published at least 52 times a year and containing matters of general interest and reports of current events, are exempt from the sales tax whether sold by subscription or for cash.

054.02 Purchases of preprints such as advertising supplements, newspaper supplements, or similar items, for distribution with newspapers are exempt when delivered directly to the newspaper by the printer or by a common or contract carrier. Any of the preprints that are not actually distributed with a newspaper, or that are not delivered directly to the newspaper, are taxable.

054.03 Publishers of newspapers are exempt from payment of sales tax on their purchases of paper, ink, preprints, and other component parts of newspapers. Purchases which do not become a component part of the finished newspaper, such as presses, photography equipment, office furnishings, and supplies are taxable.

(Sections 77-2702.13 and 77-2704.07, R.R.S. 2003. October 1, 2003.)

REG-1-055 MAGAZINES AND JOURNALS

055.01 Receipts from any sale, whether or not by subscription, for magazines and journals are taxable.

055.02 Journals include professional publications and information service publications that are updated periodically.

055.03 Publishers of magazines and journals are purchasing the property actually incorporated as a component part of the finished product as a “sale for resale”. Purchases by publishers which do not become a component part of the finished magazine or journal, such as presses, photography equipment, office furnishings, and supplies are taxable.

(Sections 77-2702.13 and 77-2704.22, R.R.S. 2003. October 1, 2003.)

REG-1-056 ADVERTISING AND ADVERTISING AGENCIES

056.01 An advertising agency performs advertising services and develops advertising materials for its clients.

056.02 The taxation of purchases by and sales of an advertising agency depend upon the written agreement between the agency and the client. The client and the agency may agree on two different provisions that affect taxation.

056.02A The client can designate the agency to operate as an agent of the client for purchases.

056.02A(1) If the client does not designate the agency to operate as their agent, the advertising agency must operate as a retailer under paragraph 056.05 of this regulation for that client.

056.02B If the client has agreed the agency is operating as their agent, the client and the agency may also agree the agency owns the materials used in producing and developing the advertising.

056.02B(1) The agreement covers the ownership of materials that are not transferred to the client or delivered to customers or potential customers within one year of the completion of the project.

056.02B(2) All materials that are physically delivered less than one year after the completion of the project to the client, to the client's customers or potential customers belong to the client regardless of the terms of the agreement.

056.02B(3) If the agency owns the materials under the agreement, the agency must operate under paragraph 056.03 of this regulation for that agreement.

056.02B(4) If the client and agency do not agree that the agency owns the materials, then the client is presumed to own the materials and the agency must operate under paragraph 056.04 of this regulation.

056.02C The agency may have one agreement with a client that covers all of the projects for that client. The agency may also have different agreements with the same client at different times or on different projects, or the agency may have different agreements with different clients.

056.02D When the agency is required to operate under different paragraphs of this regulation, the agency must have different procedures for such things as record keeping, storage or disposition of materials, and licensing of work from other persons.

056.02D(1) If the same procedures are used for all clients regardless of the terms of the agreement, the agreements will be disregarded as being intended to avoid the tax.

056.03 This section of this regulation applies when the client has designated the advertising agency as its agent for sales and use tax purposes, and has agreed in writing that the advertising agency owns the materials.

056.03A The agency must pay tax on labor or creative talent purchased from third-parties for the development or production of the ideas or for work on advertising materials.

056.03A(1) The agency must pay tax on the total amount paid to third-party artists, photographers, printers, and music producers for drawings, pictures, photographs, audio or video tapes, or for the right to use their work. The entire amount is taxable even if it is itemized as consulting, modeling fees, studio rental, or copyright license.

056.03A(2) The agency will not pay tax on salaries to its employees or fees paid to models, musicians, or voice talent hired by the agency.

056.03B The agency must pay tax on all purchases of equipment, supplies, and tools for the development or production of ideas for either advertising services or advertising materials. Items used by the agency include computers, computer software, typewriters, paper supplies, photographs, chemicals, and drawing or printing materials.

056.03C An advertising agency must pay tax on all purchases of advertising materials.

056.03C(1) Advertising materials include all types of printed material, audio tapes, video tapes, signs, posters, pictures, drawings, computer graphics, computer music, paste-ups, mechanicals, or other artwork.

056.03D The agency will not collect tax from its client on charges for projects that result in the advertising services listed below. The agency will pay tax on its purchases as otherwise required in this paragraph.

056.03D(1) Writing original manuscripts and news releases;

056.03D(2) Writing copy or preparing artwork for use in newspapers, magazines, television, or radio;

056.03D(3) Providing consultation or market research;

056.03D(4) Compiling statistical or other information; or

056.03D(5) Placing or arranging for advertisements in newspapers, magazines, television, or radio.

056.03E Advertising materials are transferred to the client if title or possession are transferred to the client or if the materials are delivered to customers or potential customers of the client.

056.03E(1) The agency will not collect tax on the amounts billed to the client for reimbursement of payments by the agency to third-parties for the materials, labor, or talent.

056.03E(2) The agency will collect tax on any amounts billed for work performed by the agency or its employees directly on materials transferred to the client.

056.03F The agency and the client are both responsible for any tax that was not paid on purchases made by the agency as an agent of the client. Only the agency is responsible for the tax on purchases of materials that will be retained by the agency.

056.04 This section of this regulation applies when the client has designated the advertising agency as its agent for tax purposes, but has not agreed in writing that the advertising agency owns all advertising materials that are not transferred. The client is presumed to own the materials for the project, including those in the possession of the advertising agency.

056.04A The agency must pay tax on any labor or creative talent purchased from third-parties for the development or production of the ideas or for work on advertising materials.

056.04A(1) The agency must pay tax on the total amount paid to third-party artists, photographers, printers, and music producers for drawings, pictures, photographs, audio or video tapes, or for the right to use their work. The entire amount is taxable even if it is itemized as consulting, modeling fees, studio rental, or copyright license.

056.04A(2) The agency will not pay tax on salaries to its employees or fees paid to models, musicians, or voice talent hired by the agency.

056.04B The agency must pay tax on all purchases of equipment, supplies, and tools for the development or production of ideas for either advertising services or advertising materials. Items used by the agency include computers, computer software, typewriters, paper supplies, photographs, chemicals, and drawing or printing materials.

056.04C The agency must pay tax on all advertising materials that will be transferred to the client, unless the client is an exempt organization.

056.04C(1) If the client is an exempt organization or exempt governmental unit, the advertising agency may give the seller an exempt sale certificate with the name and exemption number of the exempt organization.

056.04C(2) Advertising materials include all types of printed material, audio tapes, video tapes, signs, posters, pictures, drawings, computer graphics, computer music, paste-ups, mechanicals, or other artwork.

056.04D The agency will not collect tax from its client on charges for projects that result in the advertising services listed below.

056.04D(1) Writing original manuscripts and news releases;

056.04D(2) Writing copy or preparing artwork for use in newspapers, magazines, television, or radio;

056.04D(3) Providing consultation or market research;

056.04D(4) Compiling statistical or other information; or

056.04D(5) Placing or arranging for advertisements in newspapers, magazines, television, or radio.

056.04E All advertising materials are transferred to the client. This includes materials such as mechanicals or paste-ups kept at the agency, materials delivered to the client or materials delivered to customers or potential customers of the client.

056.04E(1) The agency will not collect tax on the amounts billed to the client for reimbursement of payments by the agency to third parties for materials, labor, or talent.

056.04E(2) The agency will collect tax on any amounts billed for work performed by the agency on materials.

056.04F The agency and the client are both responsible for any tax that was not paid on purchases made by the agency as an agent of the client and on all purchases of advertising materials used for the client.

056.05 This section of this regulation applies when the client has not designated the advertising agency as its agent for tax purposes. The agency must operate as a retailer and the agency is presumed to be the owner of all advertising materials not transferred to the client.

056.05A The agency must pay tax on labor or creative talent purchased from third-parties for the development or production of the ideas or for work on advertising materials. The agency may purchase from third-parties the labor used directly on the actual final product for resale.

056.05A(1) The agency must pay tax on the total amount paid to third-party artists, photographers, printers, and music producers for drawings, pictures, photographs, audio or video tapes, or for the right to use their work. The entire amount is taxable even if it is itemized as consulting, modeling fees, studio rental, or copyright license.

056.05A(2) The agency will not pay tax on salaries to its employees or fees paid to models, musicians, or voice talent hired by the agency.

056.05B The agency must pay tax on all purchases of equipment, supplies, and tools for the development or production of ideas for either advertising services or advertising materials. Items used by the agency include computers, computer software, typewriters, paper supplies, photographs, chemicals, and drawing or printing materials.

056.05C An advertising agency must pay tax on all purchases of advertising materials, except the agency will not pay tax on advertising materials that will be transferred to the client or to a customer or potential customer of the client. The materials to be transferred can be purchased for resale.

056.05C(1) Advertising materials include all types of printed material, audio tapes, video tapes, signs, posters, pictures, drawings, computer graphics, computer music, paste-ups, mechanicals, or other artwork.

056.05D The agency will not collect tax on charges for projects that result in the advertising services listed below.

056.05D(1) Writing original manuscripts and news releases;

056.05D(2) Writing copy or preparing artwork for use in newspapers, magazines, television, or radio;

056.05D(3) Providing consultation or market research;

056.05D(4) Compiling statistical or other information; or

056.05D(5) Placing or arranging for advertisements in newspapers, magazines, television, or radio.

056.05E Advertising materials are transferred to the client if they are delivered to the client or if the materials are delivered to customers or potential customers of the client.

056.05E(1) The agency must collect tax from the client on the total amounts billed to the client for advertising materials.

056.05E(2) The agency must collect tax on any amounts billed for work performed by the agency on materials transferred to the client.

056.05E(3) The agency must collect tax from the client on the total amount billed for the project including any commissions, surcharges, or agency fees connected with an advertising project that results in materials transferred to the client.

056.05E(4) When a project results in both the services listed in paragraph 056.05D and the transfer of materials, the service fees and commissions are partially taxed. The division will be based on the comparative charges for the services and the materials.

056.05E(5) If the client is an exempt organization or exempt governmental unit, the advertising agency may accept an exempt sale certificate from the exempt organization. The agency is then not required to collect the tax from the client. The agency must pay tax on all purchases of advertising materials that are not transferred as required in paragraph 056.05A.

056.05F The agency and the client are both responsible for any tax that was not paid on the total amount billed by the agency for advertising materials.

056.06 The type of display determines if charges for outdoor advertising are taxable. Charges for displays that are fixed are exempt. Fixed displays include signs and billboards attached to real estate. Charges for displays that are temporary, portable, or mobile are taxable. These displays include signs and billboards on trailers. Charges for preparing messages for such displays are taxable.

(Section 77-2702.07, 77-2702.13, 77-2702.15, and 77-2702.17, R.S.Supp., 1993. May 14, 1994.)

REG-1-057 PRINTING AND RELATED INDUSTRIES

057.01 Printing includes all printing, lithography, photolithography, typography, color separation, rotogravure, gravure, silk screen printing, imprinting, laser printing, multilithing, mimeographing, photocopying, die cutting, binding, folding, and similar operations.

057.02 The printer must collect tax on the gross receipts for printing. The gross receipts are taxable whether the printer or the customer provides the materials. Charges for delivery, postage, or shipping paid to a printer or paid directly to the U.S. Postal service or a common carrier on behalf of the printer are taxable.

057.02A Set up charges, type setting and similar charges, and charges for die cutting, embossing, folding, and other binding operations are taxable.

057.02B The gross receipts from the sale of preprints, such as advertising supplements, newspaper inserts, or similar items, are taxable except when sold for distribution with the newspaper and delivered directly to the newspaper by the printer or a common or contract carrier.

057.03 The printer must collect tax on charges for printing aids or for the preparation of printing aids. The tax must be collected whether they are sold to a client or to another printer. Printing aids are those plates or other materials that physically transfer the image to the paper or other materials.

057.04 The printer may accept a resale or exempt sale certificate or a certificate of exemption for direct mail from a customer. When the resale or exempt sale certificate or certificate of exemption for direct mail is accepted, the printer does not have to collect the tax.

057.04A The printer may accept a resale certificate from an advertising agency acting as a retailer;

057.04B The printer may accept an exempt sale certificate from an exempt organization or governmental unit that is exempt;

057.04C The printer may accept a certificate of exemption for direct mail. The purchaser is responsible for the tax associated with the direct mail certificate. A certificate of exemption for direct mail remains in effect until it is revoked in writing by the purchaser, (See Reg-1-105, Direct Mail); or

057.04D The printer may accept delivery information for direct mail. The printer will collect tax based on the jurisdictions into which the direct mail will be delivered. (See Reg-1-105, Direct Mail.)

057.05 The printer must pay tax on all machinery and equipment and on all tools, supplies, cleaning materials, and other consumables.

057.05A Consumables include printing plates that are not suitable for reuse and printing plate materials used to make printing plates which are not suitable for reuse. Such plates and plate

materials are not resold to the printer's customers and therefore, cannot be purchased by the printer tax-free for resale.

057.06 The printer must pay the tax on printing aids it purchases to use. When the printing aids are sold to the customer before they are used, the printer may purchase the printing aids for resale. Unless there is a written agreement to the contrary, the printing aids will be considered sold before use when the printing aids are separately listed and priced on the printer's invoice to the customer.

057.06A When the printing aids are sold to the customer after they are used, the printer must pay tax to his or her supplier and the printer must also collect tax on the sale to the customer.

057.06B The printer must pay tax on materials and artwork that are purchased to make printing aids. These materials and artwork include photographs, drawings, paintings, hand lettering, other artwork, photographic reproductions of such material, pasteups, mechanicals, or camera-ready copy.

057.07 The printer may purchase paper, ink, and bindery materials that will be part of the product sold to the customer for resale. Similar materials that are a part of the product delivered may also be purchased for resale.

057.08 If mats for comic strip drawings, syndicated columns, syndicated photos, or publicity photos are furnished to the publisher, then the columnist, syndicate, or the person who purchases the mat must pay the tax to the person who makes the mat.

057.09 Charges for duplicating by means of a computer, word processor, or memory typewriter are taxable. The taxable amount includes any amount for the original typing of the letter to be duplicated, and any customized information that will be automatically inserted into the letter.

057.10 Charges for individually typing by hand the salutation or inside address or a personalized reference on mechanically duplicated letters are exempt. Charges for addressing for mailing by hand are exempt.

057.11 Sales of signs, show cards, and posters are taxable. Charges for painting signs, show cards, and posters are taxable whether the materials are furnished by the painter or by the customer.

057.12 Charges for painting or lettering on real property, such as a building or a window, are not taxable. Paint is a building material and is taxed based on the contractor option selected by the painter. (Reg-1-017, Contractors.)

(Sections 77-2701.12, 77-2701.31, and 77-2701.33, R.R.S. 2003, and section 77-2701.16, 77-2701.32, 77-2701.35, and 77-2703.03, R.S.Supp., 2008. February 22, 2009.)

REG-1-058 PHOTOGRAPHERS AND PHOTOSTATIC MATERIALS

058.01 Sales and use tax applies to sales of photographs and photostatic copies. Taxable transactions include sales of photographs or photostatic copies produced to special order for the customer, and also to charges for the making of photographs or photostatic copies when the materials used are furnished by the customer.

058.01A Tax must be collected on the total selling price without deduction for the cost of the product sold, labor, professional expertise, or any other expenses of the photographer such as travel time, rental of equipment, or salaries or wages paid to assistants or models, whether or not such expenses are itemized on the billing to customers.

058.02 Photofinishers, photographers and photostat producers may purchase for resale property such as mounts, frames, and sensitized paper, which becomes an ingredient or component part of photographs or photostats which are sold. Sales to the photographer, photofinisher, or producer of materials used or consumed in the process of making the photographs or photostatic copies, such as chemicals, trays, films, plates, proof paper, and cameras, which do not become an ingredient or component part of the item sold are taxable.

058.03 Charges for printing pictures or making enlargements from negatives furnished by the customer including charges for developing the negatives are taxable. The tax also applies to charges by a photofinisher for tinting or coloring pictures.

(Sections 77-2702.07, 77-2702.13, 77-2702.15, and 77-2702.17 R.S.Supp., 1993. May 14, 1994.)

REG-1-059 TIRE RETREADING, RECAPPING AND REPAIRING

059.01 Persons engaged in the retreading, recapping and relugging of tires for customers are deemed to be producing property for sale and the sales tax attaches thereto. The sales tax shall be collected on the full amount charged the customer, which includes both materials and labor, regardless of the manner in which the customer is billed for such charges.

059.02 Where recapped, relugged or retreaded tires are sold to or processed for dealers for resale purposes, such dealers shall collect the tax on the full amount, which includes both materials and labor, when the recaps, relugs or retreads are sold at retail.

059.03 Sales tax is imposed upon the charge made for tire and tube repairing other than tires for motor vehicles, trailers or semitrailers, or agricultural machinery used in commercial agriculture. Sales to the person repairing tires and tubes of articles, equipment and supplies used in performing such repair service are sales for final use or consumption and are taxable to the repairperson at the time of purchase.

(Section 77-2702(4), (13) and (15), R.R.S. 2003. October 1, 2003.)

REG-1-060 SEEDS AND PLANTS

060.01 Sales of seeds, plants, shrubs, and trees, when sold to persons for growing or improving home lawns, ornamental gardens, parks, boulevards, and golf courses, are taxable.

060.02 Sales of garden seeds, bulbs, and plants, the products of which ordinarily constitute food for human consumption, are taxable, except that:

060.02A Sales of these seeds, bulbs, and plants are exempt if purchased with payments from the Supplemental Nutrition Assistance Program (SNAP), (Reg-1-087, Food or Food Ingredients); or

060.02B Sales of these seeds, bulbs, and plants are exempt if sold for use in commercial agriculture. (Reg-1-087, Food or Food Ingredients).

060.03 Seed legumes, seed grasses, and seed grains that are sold exclusively for use in commercial agriculture are exempt from sales tax. Tax exempt purchases of seed legumes, seed grasses, and seed grains for use in commercial agriculture do not need to be supported by a Nebraska Resale or Exempt Sale Certificate, Form 13, when the seller has other documentation to adequately support the exempt use of the products.

060.04 Commercial agriculture means the business of producing food products or other crops that are either sold or used by the grower. Commercial agriculture includes commercial production in greenhouses, nurseries, tree farms, and sod farms.

(Neb. Rev. Stat. §§ 77-2704.46 and 77-2704.54. July 3, 2013.)

REG-1-061 AGRICULTURAL CHEMICALS

061.01 Agricultural chemicals to be applied to land or crops in commercial agriculture are exempt.

061.01A Agricultural chemicals as used in this regulation includes adjuvants, surfactants, bonding agents, clays, oils, and any other additives or compatibility agents, fertilizers, anhydrous ammonia, minerals, insecticides, fungicides, rodenticides, herbicides, defoliants, soil fumigants, plant growth regulating chemicals, plant desiccants, seed inoculants, and plant hormones.

061.01B Commercial agriculture as used in this regulation is the business of producing food products or other useful and valuable crops. The crops can either be sold or used by the grower. Commercial agriculture includes commercial production in greenhouses, nurseries, tree farms, and sod farms. Commercial agriculture does not include storage of crops off the farm or in commercial elevators.

061.02 The term fertilizers as used in this regulation shall mean a substance which increases the plant food content of the soil and as a result becomes a part of the products grown or assists in the growth of the plants.

061.03 Oxygen for use in aquaculture is exempt.

061.03A Aquaculture shall mean the agricultural practice of controlled propagation and cultivation of aquatic plants or animals for commercial purposes.

061.04 Sales of agricultural chemicals for use in maintaining home lawns, home gardens, parks, boulevards, golf courses, and other nonagricultural production are taxable.

061.05 Sales of agricultural chemicals labeled by the manufacturer as solely to be applied to land or crops in commercial agriculture do not need to be supported by a Nebraska Resale or Exempt Sale Certificate, Form 13, when the seller has other documentation to support the exempt sale.

(Section 77-2702.13, R.S.Supp., 1998, and sections 2-3804.01, and 77-2704.41, R.R.S. 1996. November 11, 1998.)

REG-1-062 ANIMAL LIFE

062.01 Sales of any form of animal life, the products of which ordinarily constitute food for human consumption, are exempt from the sales tax. Cattle, domestic sheep, swine, poultry, domestic goats, and bees are examples of exempt forms of animal life. Sales of game birds subject to permit and regulation by the Game and Parks Commission are also exempt from the sales tax.

062.01A Game birds means coots, cranes, curlew, doves, grouse, partridges, pheasants, plovers, prairie chickens, quail, rails, snipes, swans, woodcocks, wild turkeys, and all migratory waterfowl.

062.01B Migratory waterfowl means ducks, geese, brant, or other migratory waterfowl subject to regulation by the Game and Parks Commission.

062.02 Purchases of animal life, the products of which do not ordinarily constitute food for human consumption, for example, zoo animals, parakeets, canaries, chinchillas, horses, donkeys, mules, elk and deer, ostriches, emus, and pets, such as cats, dogs, and birds, or breeding stock of any of these animals are examples of taxable forms of animal life. Purchases of these forms of animal life are taxable to the purchaser even when purchased for breeding purposes.

062.03 Certain animal specialty services provided to animal life may be taxable. See Reg-1-102, Animal Specialty Services, regarding the taxation of animal specialty services.

(Neb. Rev. Stat. § 77-2704.46. June 24, 2017.)

REG-1-063 FEED, WATER, AGRICULTURAL CHEMICALS, AND VETERINARY MEDICINES FOR ANIMAL LIFE

063.01 Feed, agricultural chemicals, veterinary medicines, feed supplements, and water are exempt from sales tax when consumed by, used on, or used in caring for animal life.

063.01A For purposes of this regulation, animal life is limited to animals, the products of which ordinarily constitute food for human consumption, the pelts of which ordinarily are used for human apparel.

063.01B Cattle, domestic sheep, swine, mink, chinchillas, poultry, domestic goats, game birds subject to permit and regulation by the Nebraska Game and Parks Commission, and bees are examples of food-producing or pelt-producing animal life.

063.02 Feed and feed supplements include whole and processed grains or mixtures of grains, silage, hay, and forages or meals made from these products, mill feeds and commercial feeds, minerals, salt, proteins, fats, fibers, vitamins, bone meal, cod liver oil, limestone, calcium carbonate, grit, and oyster shell. The sale of these items to be used either separately or mixed as a feed or a feed supplement is exempt from sales tax whether sold as a premix, concentrate, top dressing, or in raw form.

063.03 Water supplied for the care of animal life includes water purchased to be applied on animal life for cooling or cleaning purposes.

063.04 Water is exempt from sales tax only if any incidental use of the water for other than care of or consumption by animal life is less than 10% of the water purchased. Each purchaser claiming an exemption for water usage must provide the seller with a Nebraska Resale or Exempt Sale Certificate, Form 13, unless the water company has a formal classification of usage, as provided in Reg-1-066 that is restricted to exempt uses and the usage by the purchaser is within the classification. Reg-1-066 (Sewer and Water)

063.05 Veterinary medicines include medicines for the prevention or treatment of disease or injury in animals and include all drugs, antibiotics, viruses, serums, toxins, antitoxins, or analogous products of natural or synthetic origin. (Reg-1-078, Veterinarians and Veterinary Medicines)

063.06 Agricultural chemicals include pesticides, insecticides, fungicides, growth-regulating chemicals, hormones, rodenticides, or any other substance or mixture intended for preventing, destroying, repelling, or mitigating pests of animals or to affect the structure or function of animals. (Reg-1-078, Veterinarians and Veterinary Medicines)

063.07 Sales of feed, feed supplements, veterinary medicines, and agricultural chemicals labeled by the manufacturer as solely for treatment or care of food-producing animals do not require a

Nebraska Resale or Exempt Sale Certificate, Form 13, when the seller has other documentation to support the exempt sale. Sales of feed, feed supplements, veterinary medicines, and agricultural chemicals that can be used in the treatment or care of both food-producing animals and nonfood-producing animals are taxable unless supported by an exempt sale certificate.

063.08 Sales of feed, feed supplements, veterinary medicines, agricultural chemicals, or water for non-food producing and non-pelt producing animals, for example, zoo animals, parakeets, canaries, donkeys, horses, mules, elk and deer, ostriches, emus, work animals, and pets, such as cats, dogs, and birds, or breeding stock of these animals are taxable.

(Neb. Rev. Stat. §§ 77-2701.16 and 77-2704.41. June 24, 2017.)

REG-1-064 INTERSTATE COMMERCE

064.01 Delivery into Nebraska. If property or services are purchased from a retailer in another state for use or consumption in the state of Nebraska and delivery is made in this state, such sale is taxable. It is taxable even if the purchaser's order may specify that the goods are to be manufactured or procured by the seller at a point outside this state and shipped directly to the purchaser from the point of origin.

064.01A Delivery in this state means that physical possession of the tangible personal property is actually transferred to the buyer within this state, or that the tangible personal property is placed in the mails or given to a common or contract carrier at a point outside this state and directed to the buyer in this state.

064.01B For property or services other than tangible personal property, delivery in this state means, for utilities, the utility service is provided in this state; for maintenance agreements, the property covered is in this state or the place at which the maintenance must be performed is in this state; for satellite programming, the receiver is located in this state; and for admissions, the location to which access is granted is in this state.

064.01C See Reg-1-002, Consumer's Use Tax, concerning the consumer's responsibility to pay the use tax directly to the Department of Revenue.

064.01D Printed material purchased with delivery information provided by the purchaser but without a certificate of exemption for direct mail is taxable on the portion of the direct mail material delivered to Nebraska locations. (See Reg-1-105, Direct Mail.)

064.02 Delivery from Nebraska. When property or services are sold within this state and the seller is required as a condition of the sale to deliver it to a point outside the state, or to deliver it to a common or contract carrier for transportation to a point outside the state, the sales tax does not apply; provided, the property is not returned to a point within this state. However, where property or services are delivered in this state, the sales tax applies, even if the buyer intends to transport the property out of this state.

064.03 Acceptable proof of transportation outside the state will be:

064.03A A waybill or bill of lading made out to the order of the buyer calling for delivery;

064.03B An insurance, registry receipt, or other receipt issued by the United States Postal Service;

064.03C A trip sheet signed by the seller's delivery agent and showing the signature and address of the person outside the state who received the delivered goods; or

064.03D Direct mail information indicating delivery locations outside Nebraska.

(Sections 77-2704.11 and 77-2703.03, R.R.S. 2003, and sections 77-2703(2) and 77-2703.02, R.S.Supp., 2004. April 12, 2005.)

REG-1-065 TELECOMMUNICATIONS SERVICES

065.01 Intrastate telephone communication service and telegraph service, mobile telecommunications service, wireless paging service, and wireless radio service are taxable whether furnished by public or private corporations or enterprises. This includes those services which are sold by mutual companies.

065.01A Intrastate telephone communications services which are taxable include mobile telecommunications services, ancillary services, except for conference bridging services, and intrastate telecommunications services, except for value-added nonvoice data service, wireless paging service, wireless radio service, and the gross receipts from coin-operated telephones, 800 service, and 900 service, when the receipts are for intrastate service.

065.01A(1) Mobile telecommunications services are intrastate if the service originates and terminates in the same state. If the customer has a place of primary use in Nebraska, intrastate telecommunications services are taxable in Nebraska.

065.01B Charges made to hotels, motels, similar lodging accommodations, or any other company by telephone communication service companies for telephone communication service, including telephone communication service that may be rebilled by the telephone communication service company customer to another party, are taxable. (Reg-1-046, Hotels, Lodgings, and Accommodations)

065.01C Sales of telephone directories or directory covers to Nebraska customers by telephone service providers are taxable.

065.01D Gross receipts does not include any surcharges imposed under the Emergency Telephone Communications Systems Act, the Enhanced Wireless 911 Services Act, the Telecommunications Relay System Act, the Nebraska Telecommunications Universal Service Fund Act, or payments between telephone service providers, as defined in federal law, for division of revenue, settlements, carrier access charges, or provision of telephone communication service.

065.01E Gross receipts includes the sale of a prepaid calling service, but does not include the payments to a telephone service provider attributable to services rendered using a prepaid calling service. A prepaid calling service means the right to exclusively purchase telecommunications service that is paid for in advance that enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and whether delivered wireless or wireline.

065.01F When the purchaser is not using any portion of the purchased telephone communication services, the services may be purchased for resale.

065.02 The tax on intrastate long distance charges is computed on the gross amount of the total charge for long distance, less any interstate telephone and telegram charges. The amount of the tax computed on the intrastate long distance charges must be indicated separately on the billing

statement. The federal telecommunications excise tax, the Nebraska 911 service surcharge, the enhanced wireless 911 service surcharge, the Nebraska telecommunications relay system surcharge, and the Nebraska Universal Service Fund surcharge are excluded from gross receipts for purposes of computing the sales tax.

065.02A The tax on intrastate telephone communication service, whether on a flat or measured basis, is computed on the total amount billed by the telephone service provider for this service.

065.02B Telegrams charged to the account of a telephone subscriber and billed by the telephone service provider must include the tax as computed by the telegraph company and must appear on the billing statement in an amount equal to the regular charge for the telegrams plus the sales tax. The tax on these telegrams must be remitted by the telegraph company.

065.02C Intrastate long distance calls provided by a different service provider that are charged to the account of a telephone subscriber and billed by the telephone company must include the tax as computed by the telephone company and must appear on the billing statement in an amount equal to the regular charge for the phone call plus the sales tax. The tax on these telephone calls must be remitted by the telephone company.

065.03 Any company furnishing telephone communication service or telegraph service is required to bill the sales tax to the customer. A retailer of bundled transactions that include any telecommunications services, ancillary services, Internet access, or audio or video programming services may identify in its books and records the sales price of any nontaxable products and collect and remit tax on only the sales price of the taxable products in the bundle. If the price attributable to the nontaxable products is not reasonably identifiable and verifiable, the entire charge for the bundled transaction is taxable. (Reg-1-108, Bundled Transactions)

065.04 Persons engaged in providing telecommunications services are the consumers of materials, supplies, and other items that they use in providing their services and they must pay the sales and use tax on their purchases.

065.05 Charges made by a telephone company to the customer for nonrecurring telecommunications charges, such as installations, service connections, move and change charges, service upgrades, optional features like call waiting or voice mail, and construction costs constitute gross receipts for telephone communication service and are taxable.

065.06 All interstate long distance charges are exempt from the sales tax, as are gross receipts from coin-operated telephones that are for interstate long distance services.

065.07 Services rendered to the United States government and to federal agencies and instrumentalities, including those federal corporations listed in Reg-1-072, United States Government and Federal Corporations, are exempt. Sales to purchasers listed in Reg-1-012.02C are exempt.

(Sections 77-2701.16, and 77-2701.48, R.R.S. 2009. November 6, 2010.)

REG-1-066 SEWER AND WATER

066.01 The sales or use tax applies to all retail sales of sewer and water services.

066.02 Sales tax applies to all amounts paid for sewer and water, irrespective of whether there is an actual consumption or not. Thus, there is tax due on all payments whether in the form of a minimum charge, a flat rate, or other billing method.

066.03 The gross receipts from furnishing sewer service are taxable regardless of the nature of the use.

066.04 Rental charges made to the customer for meters, bottles, and related equipment are rentals of property and are taxable.

066.05 Water used for irrigation of agricultural lands, manufacturing purposes, or for the care of or consumption by animal life, the products of which ordinarily constitute food for human consumption or the pelts of which are ordinarily used for human apparel, is not taxable.

066.06 For the purpose of proper administration of the tax on sewer and water services and to insure that the full amount of any applicable tax is collected and remitted, the entire amount of sewer or water service sold or billed through one meter shall be taxable if any portion, other than incidental use, of such service is taxable.

066.07 Incidental use of water shall include uses that are connected with the exempt use, but are not themselves exempt, such as water for employees for drinking, hand washing, or restrooms. Such usage cannot exceed ten percent of the total usage through the meter.

066.08 Amounts received from installation, service connection, move and change charges, and construction are not gross receipts of providers of sewer and water service and are not taxable.

066.08A If there is no tangible personal property installed, annexed, or repaired and the charge is merely for activating a connected service, such charge is not taxable.

066.09 An amount added for failure to make payment within a prescribed period shall be considered as a penalty or interest to which no tax attaches; provided, the additional charge is separately billed to the customer.

066.10 Services rendered to the United States Government and to federal agencies and instrumentalities, including those federal corporations enumerated in Reg-1-072, United States Government and Federal Corporations, are exempt. Sales to those purchasers enumerated in Reg-1-012.02C are exempt.

066.11 A water or sewer company with a formal classification of usage that reasonably reflects the actual use by the customer, and such usage is for an exempt purpose, does not need to accept an exempt sale certificate from each customer account in the classification. This provision is not to be construed as relieving the consumer of liability for the applicable tax on any such usage.

066.11A Acceptance of a blanket exempt sale certificate by a sewer or water company relieves the company of any further tax liability until such time as the sewer or water company is notified of a change in use.

066.12 Persons furnishing sewer and water services may elect to assume or absorb the applicable sales tax or may elect to pass the tax to the final consumer in the same manner as all other retailers. If the election is made to assume or absorb the tax, the vendor will remit the applicable tax directly to the Department of Revenue based upon the total charges made to the ultimate consumer. The receipts will not be factored to determine the proper amount of tax. All billings to the ultimate consumer shall contain a statement to the effect that no tax is being collected from customers who are exempt or that the tax has been assumed or absorbed by the vendor for taxable customers.

066.13 If the vendor of sewer and water services elects to pass the applicable tax to the final customer, the tax shall be separately stated on all billings; provided, that in lieu of separately stating the tax, the Department of Revenue hereby authorizes the vendor to include a statement on all billings to the effect that the total charge includes sales tax. The total receipts will be factored to determine the proper amount of tax. (Reg-1-008, Records)

066.14 Persons engaged in providing water and sewer service are considered the consumers of materials, supplies, and other property or services used by them in providing their services and must pay tax on their purchases.

066.14A Exempt governmental units providing water service must also pay tax on all purchases of materials, supplies, and other property or services used in providing water service. (See Reg-1-093.04.)

066.14B Exempt governmental units providing sewer service are exempt on all purchases of materials, supplies and other property or services used exclusively in providing sewer service. (See Reg-1-093.04 and Reg-1-093.05.)

066.14C Exempt governmental units providing water service for fire protection are exempt on all purchases of materials, supplies and other property or services used exclusively in providing water service for fire protection. (See Reg-1-093.04 and Reg-1-093.05.)

066.15 Charges made between sewer and water companies for joint control and use of facilities, duct space, pole or pin space, or other joint use of facilities in connection with furnishing sewer and water services are exempt.

(Sections 77-2701.31, R.R.S. 2003, and sections 77-2701.16, 77-2701.32, and 77-2703(1)(b), R.S.Supp., 2008. February 22, 2009.)

REG-1-067 AIRCRAFT AND RELATED SERVICES

067.01 Sales of property to and by any airline engaged in the transportation of persons or property as a common or contract carrier are taxable in the same manner as are sales to and by other firms, persons, or corporations except as set out in this regulation.

067.02 Sales of aircraft, and aircraft repair and replacement parts for such aircraft, operated by air carriers authorized and certified by the United States Department of Transportation or another federal authority or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce are exempt from the sales or use tax.

067.03 Aircraft and repair parts sold for private use or business use other than as a common or contract carrier are taxable.

067.03A A nonresident individual, or other person with a business location outside this state may purchase an aircraft in this state without the payment of tax if the aircraft will not be based or registered in this state and is removed from the state within ten days of its purchase.

067.03B A nonresident individual, or other person with a business location outside this state may purchase repair parts or repair services for an aircraft in this state without the payment of tax if the aircraft will not be based or registered in this state, the parts or services are delivered at an airport, and the airplane is removed from the state within ten days.

067.03C Equipment owned by persons holding an authority described in 067.02, but who operate such equipment primarily as a private carrier does not qualify for the exemption on the purchase of aircraft, repair, and replacement parts. (Reg-1-069, Common and Contract Carrier Vehicles.)

067.04 Charges for flying lessons to obtain a private pilot's license and all dual instruction, banner towing, crop-dusting, patrols, air ambulance, search and rescue, livestock feeding, sky diving and parachuting, and charter services, when the pilot or instructor is the owner of the aircraft or employed by the aircraft owner, are exempt. Except as provided in 067.02, the purchase or use of an aircraft in providing such services is taxable based on the sales price to the purchaser.

067.05 If a customer, rather than the aircraft owner, furnishes the pilot, the use of the airplane is a rental which is taxable. See Reg-1-018, Rent or Lease of Tangible Personal Property, for sourcing of rentals or leases.

67.06 Retailers engaged in the business of selling aircraft, including retailers in the business of renting aircraft, who take aircraft originally purchased tax free through a resale certificate or from inventory (stock) for personal or business use, consumption, or gift, must report and pay a use tax on such aircraft. Such retailers must enter on their books the cost of all such aircraft and pay the applicable tax on their purchase price of the aircraft. The cost of those aircraft taken from stock is to be reported on the applicable line of the Nebraska and Local Sales and Use Tax Return, Form 10.

067.07 A retailer of aircraft as provided in 067.06 may, in lieu of paying tax on the sales price of the aircraft, elect to pay use tax on the gross receipts realized from the use of such aircraft. Gross receipts shall mean the total amount valued in money, whether received in money or otherwise, realized by retailers from the use of aircraft for any purpose, including but not necessarily limited to, those purposes enumerated in 067.04 above, except the receipts realized from the transportation of persons or property for hire as a common or contract carrier shall not be included in the gross receipts.

067.08 If such an election is made, it shall be pursuant to the following conditions:

067.08A Notice shall be filed with the Department of Revenue and such election shall be effective only upon approval;

067.08B The election, when made and approved by the Department of Revenue, shall remain in force and effect for a period of not less than two years and thereafter until such time as the retailer notifies the Department in writing of its intention to terminate the election and such termination is acknowledged by the Department;

067.08C The election shall apply to all aircraft in inventory;

067.08D When an aircraft is sold, destroyed, or otherwise removed from inventory, the appropriate tax shall be computed without any deduction, credit, or refund of use tax on gross receipts paid pursuant to this election; and

067.08E Retailers making the election must account for the gross receipts realized (as defined in 067.07) each time an aircraft is used and report the use tax on the applicable line of the Nebraska and Local Sales and Use Tax Return, Form 10.

067.09 The election shall be requested in writing and, in addition to general information, shall contain a list of all aircraft in inventory by name, model, year, and registration number.

067.10 If an aircraft is brought into Nebraska within one year of purchase and is either regularly based within this state or more than one-half of the aircraft's operating hours are within this state, such aircraft is taxable in this state.

067.10A Operating hours shall not include the operation of the aircraft for purpose of maintenance, repair, or fabrication if the aircraft is subsequently removed from the state upon the completion of the maintenance, repair, or fabrication.

(Sections 77-2701.32, 77-2704.11, 77-2704.26, 77-2704.30, 77-2704.44, 77-2704.50, and 77-2706.01, R.R.S. 2003, and section 77-2703.01, R.S.Supp., 2004. April 12, 2005.)

REG-1-068 RAILROADS

068.01 The sale of rolling stock to any railroad or any other person, whether a common or contract carrier or otherwise, is exempt. In addition, the sale of repair parts or replacement materials for use on such rolling stock is not taxable.

068.02 See Reg-1-015, Common and Contract Carriers (Multistate Operations) - Tax Deferral for the taxation of items that may be used in another state.

068.03 Sales of other types of property to and by railroads are taxable in the same manner as are sales to and by other firms, persons, or corporations.

068.04 Examples of such taxable purchases by railroads for use in this state include but are not limited to the following:

068.04A Water, sewer, and telephone service at depots;

068.04B Ties, rails, rock, and the like for track maintenance;

068.04C Office furniture and supplies; and

068.04D Motor vehicles not utilized as common carriers.

068.05 Sales of special fuel, as defined in Chapter 66, article 6, used to provide motive power for railroad rolling stock, are exempt from the sales and use tax.

(Section 77-2704.27, R.S.Supp., 1992, and sections 77-2702.13, 77-2704.05, 77-2704.11, 77-2704.30, and 77-2706(6) R.S.Supp., 1993. May 14, 1994.)

REG-1-069 COMMON AND CONTRACT CARRIERS

069.01 The purchase and use of motor vehicles, watercraft, and aircraft which are used predominantly as common or contract carriers, as well as repair and replacement parts for such equipment, are exempt from sales and use tax.

069.02 In order for a motor vehicle, watercraft, or aircraft to qualify as a common or contract carrier for sales or use tax exemption purposes, the owner of such items must submit an application on forms provided by the Nebraska Department of Revenue. Unless the motor vehicle, watercraft, or aircraft has been so qualified with the Nebraska Department of Revenue, it shall be presumed that such equipment is not a common or contract carrier for purposes of the sales and use tax exemption. This presumption may be overcome by evidence that the equipment is predominantly used as a common or contract carrier.

069.02A Only those motor vehicles, watercraft, or aircraft that are predominantly used for transporting persons or property for hire may qualify for common or contract carrier status.

069.02A(1) A common carrier is any motor vehicle, watercraft, or aircraft which is predominantly used by its owner to offer to transport the general public and the goods of the general public from place to place for compensation.

069.02A(2) A contract carrier is any motor vehicle, watercraft, or aircraft which is predominantly used by its owner to offer to transport specific persons and the goods of specific persons, on a contractual basis with such persons, from place to place for compensation.

069.02A(3) Predominantly used shall mean the total measure of use of any motor vehicle, aircraft, or watercraft (e.g., miles or hours) used to haul property as a common or contract carrier, divided by the total measure of use of the motor vehicle, aircraft, or watercraft, for all purposes, is greater than 50%. For purposes of determining this percentage, a one (1) year period of operation should be used.

EXAMPLE: Motor Vehicle #106 Odometer reading 1/1 73,146 Odometer reading 12/31 160,409 Common/contract carrier miles from customer billing records 75,919 Total miles (160,409-73,146) 87,263 % common/contract carrier usage (75,919:87,263) 87%

069.02B Any motor vehicle, watercraft, or aircraft which is used predominantly to haul the owner's goods is a private carrier and does not qualify for the exemption.

069.02C The fact that a person may have been granted a certificate of public convenience and necessity or a permit by either the Interstate Commerce Commission or the Public Service Commission does not, in itself, qualify such person's equipment as a common or contract carrier for sales and use tax purposes.

069.03 If, based on the information provided in the application, it is found that a person operates such equipment as a common or contract carrier, a Common or Contract Carrier Certificate of Exemption will be issued. All certificates expire on October 31, 1986, and every three years

thereafter. The renewal process is initiated by the Nebraska Department of Revenue. The certificate contains an exemption number assigned by the Nebraska Department of Revenue which must be used when making authorized exempt purchases. A person holding a Common or Contract Carrier Certificate of Exemption is authorized to make exempt purchases under that certificate only as hereinafter set out:

069.03A The purchase or lease of motor vehicles, trailers and/or semitrailers, watercraft, or aircraft engaged predominantly as, or to be used predominantly as, common or contract carriers of persons or property and all accessories included in the purchase price of such vehicles.

069.03B The purchase of repair and maintenance parts which become a physical part of such motor vehicles, trailers and/or semitrailers, watercraft, or aircraft engaged predominantly as common or contract carriers of persons or property.

069.03C Accessories purchased for use with the common or contract carrier vehicle which could have been included in the list price of the vehicle at the time of purchase.

069.03D Containers designed for use on transportation equipment.

069.03D(1) Containers and accessories do not include boxes, pads, and packing materials used by transportation companies.

069.03E Equipment required by a federal or state regulatory agency to be included on a common or contract carrier vehicle operating in or through the State of Nebraska for the health or safety of passengers or cargo.

069.04 An exempt sale certificate shall be completed by the person owning such common or contract carriers and furnished to the supplier when purchasing repair and maintenance parts for the common or contract carrier vehicles.

069.05 Each purchase or lease of a common or contract carrier and repair and replacement parts will be considered individually to determine if, in fact, the purchase or lease of that tangible personal property was for use predominantly as a qualified common or contract carrier or was used as a repair and maintenance part for a qualified common or contract carrier.

069.06 The exemption allowed extends only to those qualified vehicles and does not extend to purchases other than the previously described tangible personal property nor to that tangible personal property when used predominantly for other than common or contract carrier purposes.

EXAMPLE: The holder of a Common or Contract Carrier Certificate of Exemption is required to pay sales or use tax when purchasing office furnishings or when purchasing motor vehicles for use in delivering or picking up tangible personal property owned by that person or for transporting that person's personnel.

069.07 The Nebraska Department of Revenue may examine the books, papers, and records of any person issued a Common or Contract Carrier Certificate of Exemption in order to determine the propriety of purchases made without the payment of Nebraska sales or use tax. The burden of proving that sales or use tax is not due is upon the purchaser.

(Sections 77-2704.30, 77-2704.50, and 77-2705(7), R.R.S. 2003; and A-1 Metro Movers, Inc. v. Egr, 264 Neb. 291 (2002). April 12, 2005.)

REG-1-070 PRESUMPTION OF TAXABILITY

070.01 All gross receipts are taxable unless they are shown to be tax exempt. The retailer (seller) has the burden of proving that a sale of tangible personal property (or other transaction of a type subject to sales tax) is an exempt transaction, unless the purchaser presents a signed certificate demonstrating that the purchase is by an exempt organization, for an exempt purpose, pursuant to a direct payment permit, or a certificate of exemption for direct mail. See Reg-1-014, Exempt Sale Certificate.

070.02 The Tax Commissioner will make available a taxability matrix that is in a format in compliance with the Streamlined Sales and Use Tax Agreement.

070.02A Sellers, Model 2 sellers, or certified service providers (CSPs) relying on information contained in the taxability matrix are relieved from liability for tax, penalty, or interest resulting from incorrect data in the matrix.

070.02B Purchasers or a purchaser's CSP relying on erroneous information in the taxability matrix or the rates and boundaries database are relieved from liability for any penalty resulting from a failure to pay the tax, but remain liable for any tax and interest.

070.02C CSPs or Model 2 sellers are allowed 10 days after notification by the Department that an item or transaction has been incorrectly classified, to correct the erroneous classification contained within approved system software before the CSP or Model 2 seller is held liable for failure to collect the correct amount of tax due.

070.03 Sellers may not structure transactions or billing of charges as a means of avoiding the imposition of tax on the gross receipts of the sale. For example, understating charges for the taxable parts of a transaction while overstating charges for the nontaxable parts of the transaction will be ignored for purposes of the sales tax.

070.04 For use tax purposes, it is presumed that any property or service sold, leased, or rented by any person for delivery in this state is sold, leased, or rented for storage, use, or other consumption in this state. The purchaser carries the burden of proving the contrary.

070.05 Acceptance of a Resale Certificate, Exempt Sale Certificate, direct payment permit, certificate of exemption for direct mail, or Common or Contract Carrier Certificate of Exemption relieves the retailer from any further tax liability.

070.06 The person who presents a Resale Certificate, Exempt Sale Certificate, direct payment permit, certificate of exemption for direct mail, or Common or Contract Carrier Certificate of

Exemption which the person knows, at the time of purchase, to be an improper use of the certificate or permit, is guilty of a misdemeanor.

(Neb. Rev. Stat. §§ 77-2703, 77-2705, 77-2705.01, 77-2705.02, 77-2705.03, and 77-2706. June 24, 2017.)

REG-1-071 CREDIT FOR TAX PAID TO ANOTHER STATE

071.01 If a person brings property or services into Nebraska for storage, use, or other consumption and has properly paid a sales, use, excise, or similar tax to a foreign state or any of its political subdivisions, in connection with the sale of the property or services, then a credit is allowed for the payment of that tax. The credit is applied first against the amount of any use tax due this state. Any unused portion of the credit is then applied against the amount of any use tax due a Nebraska municipality or county that levies a local sales tax.

071.02 If the tax paid to the foreign state and its political subdivisions is less than the use tax imposed by Nebraska and its subdivisions, the difference is due. If the sales, use, excise, or similar tax properly paid to the foreign state or any of its political subdivisions, is equal to or exceeds the use tax imposed by Nebraska and its political subdivisions, use tax is not due Nebraska. Any excess is not refundable nor may it be used as a credit against the use tax due on purchases of any other property or service.

071.03 The credit allowed is limited to a credit for the amount of foreign state or political subdivision tax actually paid, and does not include the amount of any credits allowed in the other state. Use tax due in Nebraska cannot be extinguished through a tax exemption afforded on the same transaction by a foreign state.

071.04 Sales tax is properly paid to a foreign state or its political subdivision if the tax is legally due to the foreign state or its political subdivision.

071.04A Sales tax is NOT considered legally due to the foreign state or its political subdivision if:

071.04A(1) The purchaser is entitled to a refund of the tax paid to the foreign state or its political subdivision for any reason;

071.04A(2) The delivery neither originates nor terminates in the foreign state;

071.04A(3) The property was never stored, used, or consumed in the foreign state;
or

071.04A(4) The sale was not properly sourced to the foreign state.

071.04B If the sales tax is not legally due the foreign state, the tax is not considered properly paid and no credit will be allowed in Nebraska.

071.05 Tax paid to the seller of advertising and promotional direct mail based upon the shipping point, or tax paid to the seller of other direct mail based upon the purchaser's address, pursuant to Regulations 1-105.04 and 1-105.05, respectively, does not constitute a properly-paid tax for

purposes of allowing credit against the use tax due to the state or locality based upon the delivery address.

(Neb. Rev. Stat. §§ 77-2703.03 and 77-2704.31. June 24, 2017.)

REG-1-072 UNITED STATES GOVERNMENT AND FEDERAL CORPORATIONS

072.01 Sales to the United States (U.S.) government, its agencies, instrumentalities, and corporations wholly owned by the U.S. government are exempt from sales and use tax. However, sales to institutions chartered or created under federal authority, but which are not directly operated and controlled by the U.S. government for the benefit of the public, are generally taxable.

072.02 Absent an express waiver of intergovernmental immunity by statute, federal corporations that are performing a federal function are instrumentalities of the U.S. and are exempt from sales and use tax. Examples include, but are not limited to:

072.02A Farm Credit Banks, (previously Federal Land Banks) and other national or local operating entities chartered or administered by the Farm Credit System, including Federal Land Credit Associations, the Central Bank for Cooperatives, the Regional Banks for Cooperatives, the Federal Farm Mortgage Corporation, Production Credit Associations, and Agricultural Credit Associations;

072.02B The Federal Deposit Insurance Corporation;

072.02C Corporations administered by the U.S. Department of Agriculture to support agriculture, including Commodity Credit Corporations and the Federal Crop Insurance Corporation;

072.02D A Federal Reserve Bank;

072.02E Corporations chartered by the U.S. government to issue, subsidize, or guarantee home loans, including the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the Government National Mortgage Association (Ginnie Mae);

072.02F The Student Loan Marketing Association (Sallie Mae);

072.02G A Federal Credit Union;

072.02H The National Railroad Passenger Corporation, and the Amtrak Commuter Services Corporation (Amtrak); and

072.02I The American National Red Cross and all its chartered units.

072.03 Any federal corporation not listed above that claims a sales tax exemption has the burden of proving the exemption to the Nebraska Department of Revenue (Department).

072.04 A federal corporation is presumed to be sales tax exempt if the purchases are ordered on prescribed U.S. government forms and payment is made by issuing U.S. government warrants.

072.05 Sales by agencies and corporations of the U.S. government are taxable, but the obligation to collect and remit the sales tax cannot be imposed on the agency or corporation, unless collection is specifically permitted by federal law.

072.05A If the agency or corporation does not collect the sales tax, the purchaser must remit use tax directly to the Department.

072.05B No sales or use tax is owed for purchases made from commissaries, base exchanges, ships' stores, or voluntary, unincorporated organizations of personnel of any branch of the Armed Forces of the U. S. by any person authorized to make these purchases.

072.06 Certain foreign diplomatic personnel have been granted sales tax exemptions by federal treaty. These diplomatic personnel are issued tax exemption identification cards by the U.S. Department of State or the American Institute in Taiwan that indicate the specific taxes from which the person is exempt, and the monetary or other limits imposed on the use of the exemption. Diplomatic personnel with tax exemption identification cards must pay sales tax on all purchases that are beyond the scope of the tax exemption card or that are beyond the monetary or other limits of the card. Diplomatic personnel without the identification card must pay sales or use tax on all purchases.

(Neb. Rev. Stat. § 77-2704.02, Department of Employment v. United States, 385 U.S. 355, 17 L Ed 2d 414, 87 S Ct 464 (1966), United States v. District of Columbia, 558 F.Supp.213, 218 (1982), reversed as moot, 709 F.2d 1521, U.S.App.D.C. 295(1983), and 4 U.S.C. § 107. July 3, 2013.)

REG-1-073 DISCONTINUATION OF BUSINESS

073.01 If any person liable for any sales or use tax sells his or her business or stock of goods or quits the business, the purchaser as his or her successor or assignee, shall withhold a sufficient amount of the purchase price to cover the tax liability until a receipt from the Tax Commissioner showing that the liability has been paid or a certificate stating that no amount is due is produced.

073.02 If the purchaser of a business or stock of goods fails to withhold a portion of the purchase price as required, then he or she shall become personally liable for the payment of the amount required to be withheld by him or her to the extent of the purchase price.

073.03 Either the seller of a business or stock of goods or the purchaser as his or her successor or assignee, may request in writing that the Tax Commissioner issue either a certificate stating that no tax is due, or a notice stating the amount of tax due. This request shall state the purchaser's address and Nebraska identification number and the seller's address and Nebraska identification number and indicate when and where the seller's records are available for audit. The certificate or notice of tax due shall be mailed to the purchaser at his or her address as it appears in the letter requesting such certificate or notice.

073.04 Any person discontinuing business is required to:

073.04A Notify the Department of Revenue;

073.04B Return his or her Sales Tax Permit for cancellation; and

073.04C Preserve all business records pertaining to the sales tax until the Department of Revenue issues the certificate referred to above, or for the period required in Reg-1-008, Records, whichever is longer.

073.05 Any person desiring to engage in the operation of a business as successor to a former owner shall apply for a Sales Tax Permit. Each successor to another retailer, when applying for a Sales Tax Permit, shall inform the Department of Revenue of the name and permit number of the previous owner.

(Section 77-2707, R.R.S. 1943. January 24, 1993.)

REG-1-074 WARRANTIES AND GUARANTEES

074.01 A charge for the purchase of a warranty, guarantee, service agreement, service contract, or maintenance agreement, is taxable, whenever the item covered or the services to be provided are taxable.

074.01A Neither sales nor use tax applies with respect to property used, or any repair labor or services performed in fulfilling the obligations for repair under such a warranty or guarantee.

074.01B If the maintenance agreement does not provide full coverage, the amount charged for parts used in the repair is taxable and the amount charged for labor in the repair is taxable if repair labor for the covered item is taxable.

074.01C A deductible amount that is due, except for a deductible required under an agreement covering a motor vehicle, is taxable.

074.02 If the item covered must be annexed to real estate in order to function, the charge for the agreement is exempt.

074.02A Sales or use tax applies to parts or other property used in fulfilling the obligations under such a warranty or guarantee regardless of the contractor option elected. (See Reg-1-017, Contractors)

074.02B If the maintenance agreement does not provide full coverage, the amount charged by an Option 2 or Option 3 contractor for either parts or labor is not taxable. The amount charged for parts by an Option 1 contractor, or the total amount charged by an Option 1 contractor if charges for parts and labor are not separated, is taxable.

074.02C A deductible amount that is due is not taxable.

074.03 If an agreement covers both taxable and nontaxable items or services, the entire amount charged for the agreement is taxable. Parts, labor, additional charges, and deductibles will be taxed as described above in paragraphs 074.01 or 074.02 depending upon whether a maintenance agreement on the single item currently being serviced would be taxable or exempt.

074.04 Maintenance agreement shall mean any contract or agreement to provide or pay for the maintenance, repair, or refurbishing of an item, the sale of which is subject to tax, for a stated period of time or interval of use. Maintenance agreement shall include any such agreement whether or not the agreement requires additional payments for some or all of the parts or services provided under the agreement. Maintenance agreement shall include contracts or agreements designated as warranties, extended warranties, guarantees, service agreements, maintenance agreements, or any similar term.

074.04A Maintenance agreement includes any service contract that provides repair labor or building cleaning services.

074.04B Maintenance agreement shall not include any contract or agreement subject to the premium tax under Chapter 77, article 9 of the Nebraska Revised Statutes, from a service contract business operating with a certificate of authority from the Department of Insurance.

(Sections 77-2701.10 and 77-2701.16, R.R.S. 2003. February 22, 2009.)

REG-1-075 CONFIDENTIAL INFORMATION

075.01 Except as provided in Neb. Rev. Stat. § 77-2711 or the regulations of the Nebraska Department of Revenue (Department), it is a misdemeanor for the Tax Commissioner, any employees, legal representatives, or agents of the Department, any employee of the State Treasurer or the Department of Administrative Services, or any person receiving information from any of them, to:

075.01A Divulge or make known in any manner, the business affairs, operations, or information obtained by an investigation of records and equipment of any person visited or examined in the discharge of official duty;

075.01B Divulge the amount or source of income, profits, losses, expenditures, or any related items disclosed in any return; or

075.01C Permit any return, copy of a return, or any book containing any abstract or items from the return to be seen or examined by any person not connected with the Department.

075.02 Information as to whether or not a taxpayer has a valid Sales Tax Permit, has been granted an exemption, or regarding which option has been elected by a contractor may be released to any person upon request.

075.03 The Department will comply with the provisions of the Streamlined Sales and Use Tax Agreement for the protection and retention of personally-identifiable information of taxpayers.

(Neb. Rev. Stat. § 77-2711. June 24, 2017.)

REG-1-076 JEOPARDY DETERMINATIONS AND ASSESSMENTS

076.01 The Department of Revenue may initiate jeopardy determination and assessment proceedings if it determines that any of the following conditions exist:

076.01A The taxpayer is about to leave the State of Nebraska.

076.01B The taxpayer is about to remove his or her property from the State of Nebraska.

076.01C The taxpayer is about to conceal himself or herself or his or her property.

076.01D The taxpayer is about to do any act which tends to delay, prejudice, or make ineffective any proceedings to collect sales or use tax from preceding or current years, unless jeopardy proceedings are immediately initiated. In any subsequent court proceedings, the finding by the Department of Revenue that one or more of these conditions existed shall be for all purposes prima facie evidence of the taxpayer's intentions.

076.02 The Department of Revenue may declare that the tax period for the taxpayer is terminated, regardless of when the period would normally end; by sending a written notice to the taxpayer; and demanding immediate payment of tax due for the period. If the taxpayer desires to petition the Department of Revenue for a redetermination, he or she must do so in writing within ten (10) days after the service of notice in accordance with Reg-33-004.02B. Failure to file a petition for redetermination within ten (10) days shall cause the determination to become final. In addition, the Department of Revenue need not reconsider the determination unless the taxpayer within the ten-day period provides security, in an amount determined by the Department of Revenue, to insure compliance with the law. If the taxpayer has not been in default in filing returns or in making payments in the past, he or she may furnish security to insure that he or she will file a return and pay the tax at the next regular filing date. If the security is approved by the Department of Revenue, the payment of taxes will not be enforced until the expiration of the usual time period.

076.03 If the taxpayer is outside of this state or leaves this state and ignores all demands for payment, the Department of Revenue may make use of collection agencies or attorneys located outside the state to enforce collection.

076.04 If a taxpayer violates, or attempts to violate the rules and regulations regarding a jeopardy determination and assessment, an additional penalty of 25% of the total of the tax due, the interest owed thereon, and all other penalties resulting therefrom, or fifty dollars (\$50.00), whichever is the greater amount shall be assessed.

(Section 77-2710, R.R.S. 1943. January 24, 1993.)

REG-1-077 COMBINED SALES TAX RETURNS

077.01 If any retailer conducts business operations and makes sales subject to sales tax at more than one location, the retailer may apply for permission to file a combined sales tax return covering the business operations of two or more locations. The Department of Revenue (Department) will approve the application if: each sales location holds a sales tax permit; the same person or persons own 80% or more of each licensed location; and the books, records, and accounts of these locations are kept at a single address.

077.01A The application for permission to file a combined sales tax return must be submitted on forms provided by the Department and, in addition to other information, must identify the business locations to be included in the combined sales tax return.

077.01B If the application is approved, the identified business locations must be reported on a combined sales tax return until the Department grants permission to change. Business locations may not be added to or deleted from the combined sales tax return without written application and the prior approval of the Department.

077.01C The Tax Commissioner may also permit combined sales tax returns as allowed by the Streamlined Sales and Use Tax Agreement.

077.02 A Combined sales tax return must be filed monthly, reporting the information required by the Department for each business location included on the combined return.

077.02A All information requested on the return must be completed for each business location. Failure to comply will cause the retailer to be subject to penalties.

077.02B The combined return and the information for each business location must be filed electronically. Payments must also be made electronically.

077.03 The collection fee allowed on the combined return will be the aggregate of the collection fees calculated for each individual business location.

077.04 Retailers that do not have the same ownership but operate within a business location cannot be included on a combined sales tax report.

(Neb. Rev. Stat. §§ 77-1784 and 77-2708(1). July 3, 2013.)

REG-1-078 VETERINARIANS AND VETERINARY MEDICINES

078.01 The following definitions apply to this regulation.

078.01A Veterinary medicines include medicines for the prevention or treatment of disease or injury in animals and include all drugs, antibiotics, viruses, serums, toxins, antitoxins, or analogous products of natural or synthetic origin.

078.01B Agricultural chemicals include pesticides, insecticides, fungicides, growth-regulating chemicals, hormones, and rodenticides or any other substance or mixture intended for use in preventing, destroying, repelling, or mitigating pests of animals, or to affect the structure or function of animals.

078.01C Food-producing or pelt-producing animals include animal life, the products of which ordinarily constitute food for human consumption; or the pelts of which are ordinarily used for human apparel. Cattle, sheep, swine, mink, chinchillas, poultry, goats, game birds subject to permit and regulation by the Game and Parks Commission, and bees are examples of food-producing or pelt-producing animal life.

078.01D Non-food producing animals—include zoo animals, parakeets, canaries, horses, donkeys, mules, domesticated elk and deer, ostriches, emus, and pets, such as cats, dogs, and birds, or breeding stock of any of these animals.

078.01E Providing professional services means the veterinarian has established a doctor-patient, or doctor-client relationship with the client.

078.01F Livestock means any domestic cattle, horses, mules, donkeys, sheep, or swine.

078.02 Veterinarians are engaged in the business of providing professional services to owners of domestic animals through care, medication, and treatment of their animals. Charges for professional services provided by veterinarians and veterinary clinics are not taxable.

078.03 Veterinarians and veterinary clinics are consumers of all property and services they purchase for use in providing professional services and they are required to pay sales or use tax on all purchases except:

078.03A Purchases of veterinary medicines and agricultural chemicals to be used in the treatment or care of food-producing or pelt-producing animals;

078.03B Purchases of feed and feed supplements to be fed to food-producing or pelt-producing animals;

078.03C Purchases of veterinary medicines, agricultural chemicals, and other products that are not used to provide professional services but are sold at retail; and

078.03D Purchases of animal specialty services for livestock.

078.04 Veterinarians and veterinary clinics that purchase items without paying sales or use taxes and use these items when providing professional services must remit use tax on the cost of the item, unless the item is otherwise exempt.

078.05 Veterinarians or veterinary clinics that sell veterinary medicines, agricultural chemicals, feed, feed supplements, veterinary supplies, equipment, or other products, or provide animal specialty services, separate from providing professional services, are required to collect sales tax from their customers, unless the sales are otherwise exempt.

078.05A See Reg-1-063, Feed, Water, Agricultural Chemicals, And Veterinary Medicines for Animal Life, for details regarding documentation required to support certain exempt sales.

078.05B See Reg-1-102, Animal Specialty Services, for details regarding taxability of animal specialty services.

078.05C If a veterinarian or veterinary clinic paid sales tax at the time of purchase on the items sold, sales tax must be collected from the customer on the full retail price. The veterinarian or veterinary clinic will remit to the state the difference between the sales tax collected from the customer and the sales tax previously paid by the veterinarian or veterinary clinic on those items.

078.06 Items used in providing professional services are not retail sales regardless of how the charges are itemized on the billing invoice.

078.07 The practice of veterinary medicine is not commercial agriculture. Therefore, machinery and equipment purchased by veterinarians and veterinary clinics to be used in their veterinary practice are not exempt under Reg-1-094, Agricultural Machinery and Equipment Refund.

(Neb. Rev. Stat. §§ 54-183, 77-2701.16(3)(g), and 77-2704.41. June 24, 2017.)

REG-1-079 DELIVERY CHARGES

079.01 Charges for delivery, freight, postage, shipping, handling, crating, packing, or transportation of an item are taxable whenever the item is taxable and the charges are paid to the retailer of the item.

079.02 A single delivery charge for the shipment of exempt property and taxable property should be allocated using a percentage that is:

079.02A Based on the total sales price of the taxable property compared to the total sales prices of all property in the shipment; or

079.02B Based on the total weight of the taxable property compared to the total weight of all the property in the shipment.

079.02C The seller must collect tax on the percentage of the delivery charge allocated to the taxable property but does not have to collect tax on the percentage of the delivery charge allocated to the exempt property.

079.03 Charges for delivery, freight, postage, shipping, or transportation that are paid to a person other than the retailer are exempt.

(Sections 77-2701.11 and 77-2701.35, R.R.S. 2003, and section 77-2701.16, R.S.Supp., 2004. April 12, 2005.)

REG-1-080 SALES OF LEGAL, MEDICAL, AND COMMERCIAL DOCUMENTS AND RECORDS

080.01 Charges for providing documents are exempt as a governmental service if the law or ordinance requires the furnishing of documents or copies of documents, such as permits or licenses, by a governmental agency, or if the documents are public records.

080.01A Public records mean public records as defined in section 84-712.01.

080.01B Documents which are developed, produced, or acquired and made available for commercial sale to the general public are taxable, unless the price for the document is fixed by state law, rule, or regulation.

080.02 Charges for originals or copies of depositions, bills of exceptions, and transcripts prepared and sold by a court reporter are not taxable. Depositions, bills of exceptions, and transcripts or copies of depositions, bills of exceptions, and transcripts prepared and sold by anyone other than a court reporter are taxable.

080.02A Bill of exceptions means a verbatim record of anything and everything said or done by anyone in the course of trial or any other proceeding; any motion, comment, or statement made by the court in the presence and hearing of a panel of potential jurors or the trial jury; any objection to the court's proposed instructions or to instructions tendered by any party, together with the court's rulings, and in post trial proceeding; amendments to the bill of exceptions, together with the court's rulings; and the index of the bill of exceptions.

080.02B Court reporter means a person who possess the knowledge, skill, and ability to produce a verbatim record of court and other legal proceedings.

080.02C Deposition means a written declaration under oath in accordance with procedures provided by law, made upon notice to the adverse party for the purpose of enabling him or her to attend and cross-examine, or made upon written interrogatories pursuant to section 25-1242 of the Nebraska Revised Statutes.

080.02D Transcript means a writing or record (original or copy) of judicial, legislative, administrative, or other legal proceedings, including, but not limited to: pleadings upon which the case was tried; the judgment, decree, or final order sought to be reversed, vacated, or modified; the lower court's memorandum opinion, if any; and other parts of the record as are necessary and material to the assignments of error.

080.02E Verbatim record means one which accurately reflects the spoken word and nonverbal communication and action.

080.03 Blueprints, abstracts, law briefs, and other similar documents furnished in connection with personal services in a professional capacity are not taxable when furnished as a part of providing personal services.

080.04 If blueprints, abstracts, law briefs, or other similar documents or the information on such documents are sold by a person without providing personal services in a professional capacity, the sales tax must be collected on the sale of the documents.

080.05 Mailing lists and prospect lists provided in the form of labels, magnetic media, or diskette, whether in an electronic or any other format, are taxable.

080.06 Sales of Nebraska Statutes, reports of court cases, advance sheets, brand books, departmental manuals, and other similar publications are taxable.

080.07 Sales of copies of medical records provided to the patient or a person named as the patient's power of attorney for health care are not taxable. A power of attorney for health care, under Neb. Rev. Stat. §§ 30-3401 through 30-3432, authorizes a designated attorney-in-fact to make health care decisions for the principal when the principal is incapable.

080.08 Persons performing professional services are consumers of all materials and supplies used in rendering their professional services and must pay the sales or use tax when purchasing materials and supplies.

(Section 25-1280, R.R.S., 2004, sections 77-2701.33, 77-2704.58, 77-2704.59, R.R.S. 2009, and ABI v Egr, 264 Neb. 574 (2002). June 6, 2011.)

REG-1-081 CABLE AND SATELLITE SERVICE

081.01 Gross receipts for furnishing community or county antenna television service (cable service), furnishing satellite television or radio programming (satellite service), or selling prepaid satellite service are subject to sales tax.

081.01A Furnishing cable service means delivering programming to customers using signals transmitted over or through a distribution system of wires, cables, or other conduits.

081.01B Furnishing satellite service means delivering programming to customers using signals emitted by satellites and received by receivers at the customer's location.

081.01C Selling prepaid satellite service means selling the right to obtain satellite service from a person that furnishes satellite service which is paid for in advance using an access code or authorization code to activate a satellite receiver. The seller of the prepaid satellite service does not have to furnish the satellite service for the sale to be subject to tax.

081.02 Gross receipts for furnishing prepaid satellite services does not include payments from the seller of the prepaid service to a satellite service provider.

081.03 All billings to the final consumer must indicate a separate amount for the sales tax.

081.04 Installation, service connection, and move and change charges are taxable gross receipts, whether paid to the person providing the cable or satellite service, or to another person.

081.04A When an Option 2 or Option 3 contractor is not acting as a subcontractor for a public utility, labor charges for installation performed on the customer's side of the demarcation point are not subject to tax. Reg-1-017, Contractors.

081.04B Cable service operators and retailers of satellite service are not public utilities for purposes of this section.

081.05 If any or all of the charge for the activation commission, finder's fee, installation charge, or similar payment is paid to the installer by a third-party service provider any tax due must be paid and remitted to the Department by the third-party service provider.

081.06 Cable service operators and retailers of satellite service are consumers of property used in providing, installing, constructing, operating, or servicing the system. Purchases of materials for these purposes are taxable.

081.07 Cable service operators and retailers of satellite services may purchase tapes, movies, digital goods, satellite programming, remote controls, and magazines sales tax exempt for resale to customers, but must collect sales tax on sales or rentals of these items to their customers.

(Neb. Rev. Stat. §§ 77-2701.16, 77-2701.32, and 77-2703(1). June 24, 2017.)

REG-1-082 LABOR CHARGES

082.01 INTRODUCTION

082.01A Labor charges relating to tangible personal property will generally fall into one of four categories: production, assembly, repair, and installation. Labor on annexed property, fixtures, or real estate is contractor labor and is generally exempt. (See Reg-1-017, Contractors)

082.02 TYPES OF LABOR CHARGES

082.02A PRODUCTION LABOR. Production labor is labor used for producing, fabricating, processing, printing, or imprinting tangible personal property for consumers during which the tangible personal property is created, transformed, or reduced to a different state, quality, form, property, or thing. Transformation may occur by hand, machine, art, chemical action, or natural means. The property may be furnished by the person performing the labor; furnished directly by the consumer; or furnished indirectly through the consumer arranging for delivery of the property by a third party.

082.02B ASSEMBLY LABOR. Assembly labor is the labor involved in collecting or gathering together the various parts and placing them in their proper relationship to each other to constitute a piece of machinery, equipment, or other tangible personal property.

082.02C REPAIR LABOR. Repair labor is defined as the labor involved in restoring to essentially its original form and condition or replacing a used, worn, or damaged item of tangible personal property. Repair labor includes replacing a component or subassembly of an item with a substantially similar component or subassembly. Repair labor does not include making repair parts for another person who is making the repair.

082.02D INSTALLATION LABOR. Installation labor is defined as the labor involved in placing a piece of machinery, equipment, or other tangible personal property that is already assembled in a position where it will reasonably accomplish the purposes for which it was intended.

082.03 TAXABILITY OF LABOR CHARGES

082.03A Charges for production and assembly labor are taxable.

082.03B Charges for installation and repair labor are taxable when the item of property being installed, repaired, or replaced is taxable and is not annexed to real property.

082.03C Charges for labor to repair motor vehicles are not taxable.

082.03C(1) Charges for painting of motor vehicles, including labor, are taxable.

082.03C(2) Charges for labor to install accessories or add-ons to motor vehicles are taxable.

082.04 STATEMENT ON SALES INVOICE. Taxable charges for labor performed on tangible personal property are taxable regardless of whether they are separately stated on the same sales invoice or are separately invoiced. Charges for otherwise exempt labor performed on tangible

personal property are not taxable; provided, these charges are separately stated on the same sales invoice or are separately invoiced, and such separate statement is not used as a means of avoiding the imposition of the tax upon the actual sales price of the tangible personal property.

(Sections 77-2701.33, R.R.S. 2003, and sections 77-2701.16, and 77-2701.35, R.S.Supp., 2008. February 22, 2009.)

REG-1-083 PREPARED FOOD AND BEVERAGE SERVICE

083.01 Retail sales of prepared food, including sales by caterers and concessionaires, and all sales of prepared food, food, and food ingredients through vending machines are taxable. Retail sales of alcoholic beverages are taxable, whether sold packaged or sold by the drink. (Reg-1-031, Coin-Operated Machines; Reg-1-040, Alcoholic Liquors Consumed on the Premises; and Reg-1-087, Food or Food Ingredients.)

083.02 Prepared food is food generally intended for immediate consumption, and is prepared to a point generally accepted as ready to be eaten without further preparation. Prepared food means:

083.02A Food sold in a heated state or heated by the retailer, including, but not limited to hamburgers, hot dogs, pizza, egg rolls, baked beans, and nachos with heated cheese sauce;

083.02B Two or more foods or food ingredients mixed or combined by the retailer for sale as a single item and not sold by weight or volume, including, but not limited to, fountain drinks, ice cream cones, sandwiches, and salad bars; or

083.02C Food sold with eating utensils provided by the retailer. Eating utensils include, but are not limited to, plates, knives, forks, spoons, glasses, cups, napkins, or straws. Plates do not include a container or packaging used to transport the food.

083.02C(1) If 75% or less of the sales of food by the retailer are sales of prepared food described by 083.02A and 083.02B, eating utensils are considered provided by the retailer only if they are given to the purchaser by the retailer.

083.02C(2) If more than 75% of the sales of food by the retailer are sales of prepared food described by 083.02A and 083.02B, eating utensils are considered provided by the retailer if they are available on the premises where the food is sold, regardless of whether or not the purchasers are given the utensils or take them.

083.02C(3) The 75% test is determined in the following manner:

083.02C(3)(a) The numerator is the total sales of prepared food described by 083.02A and 083.02B.

083.02C(3)(b) The denominator is the total sales of food, food ingredients, prepared food, candy, dietary supplements, and soft drinks.

083.02C(3)(c) Exclude sales of alcoholic beverages, tobacco, motor vehicle fuels, and all other non-food sales from both the numerator and the denominator.

083.02C(3)(d) The percentage is calculated using the retailer's most recently completed tax year, or if the retailer has been in operation less than a year, the retailer must make a good faith estimate of the percentage for the first year. The good faith estimate must be reviewed after three months of operation and adjusted, if appropriate. A single percentage should be calculated for all of the retailer's locations in the state.

083.02C(4) Even if more than 75% of the sales of food by the retailer are sales of prepared food, sales of food or food ingredients are not taxable if the transaction is for four or more servings as described in the “Nutrition Facts” box on the labels as required by 21 C.F.R. § 101.9, and the retailer maintains adequate records of each sale. If the transaction is for less than four servings, or the retailer does not maintain adequate records of these sales, sales tax must be collected on these food sales.

083.02C(5) Examples of food sold with eating utensils include, but are not limited to, pieces of cake or pie served with a fork, bagels served with a knife, and cookies or donuts served on a napkin.

083.03 Prepared food does not include:

083.03A Food sold by a manufacturer whose primary NAICS classification is a food manufacturer (311XX);

083.03B Bakery items such as bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas that are not sold in a heated state or with eating utensils;

083.03C Food that is only cut, repackaged, or pasteurized by the seller, including, but not limited to, luncheon meats, cheeses, meat and cheese trays, and fruit trays;

083.03D Food sold in an unheated state by weight or volume as a single item, including, but not limited to, containers of potato salad, coleslaw or fruit salad, pudding, and popcorn; or

083.03E Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer to prevent foodborne illnesses.

083.04 Sales and use tax applies to the gross receipts from preparing or serving prepared food and alcoholic beverages, including, for example charges for food, wages, use of dishes, room service, silverware, glassware, chairs, and tables.

083.04A Single-use, disposable food service items available to customers as a part of the retail sale of prepared food may be purchased for resale. Examples include, but are not limited to paper napkins, place mats, straws, plastic utensils, and paper cups.

083.05 Charges made by a caterer, restaurant or other retailer of prepared food or alcoholic beverages, for furnishing employees, for example, bartenders, servers, or chefs are taxable even if separately stated at the time of billing. Sales and use tax is not applied to charges for announcers, coat check services, ushers, or other persons not connected with preparing or serving of prepared food or alcoholic beverages if the charges for these services are separately stated on the invoice and the type of service is adequately described.

083.06 Sales and use tax applies to sales of prepared food or alcoholic beverages by railroads, airlines, or other transportation companies while operating in Nebraska.

083.06A If transportation companies provide prepared food or alcoholic beverages to passengers without charge, the transportation company’s purchases of prepared food or

alcoholic beverages are considered retail sales and subject to sales or use tax regardless of where the prepared food or alcoholic beverages are served to passengers.

083.07 If a retailer adds a charge for gratuities or tips to charges for prepared food and alcoholic beverages, these charges are taxable even if all or a portion of the amount is paid by the retailer to his or her employees.

083.07A Discretionary gratuities or tips given by customers are exempt even if charged to the customer's account and not paid directly to the server, waiter, or waitress at the time of sale or service.

083.08 The following sales of prepared food are not taxable:

083.08A Prepared food sold and served by a religious organization at a function of the religious organization;

083.08B Prepared food sold and served to patients, residents, and inmates of hospitals and other institutions licensed by the state for the care of human beings;

083.08C Prepared food sold and served at political fund-raising events by ballot question committees, candidate committees, independent committees, and political party committees;

083.08D Prepared food sold and served to the elderly, handicapped, or recipients of Supplemental Security Income by organizations that accept payments from the Supplemental Nutrition Assistance Program (SNAP);

083.08E Any purchases made with payments from SNAP; and

083.08F Prepared food sold or served by public or private schools, school districts, student organizations, or parent-teacher associations pursuant to an agreement with the proper school authorities, or in an elementary or secondary school or any institution of higher education, public or private, during the regular school day or at an approved function of the school or institution. (Reg-1-092, Educational Institutions).

083.08F(1) This exemption does not apply to sales of prepared food by an institution of higher education at a facility or event that is open to the public.

083.09 Fraternities, sororities, dorms, boarding houses, retirement communities, or other residential facilities where members or residents reside at a common location and prepared food is provided by the residential facilities as part of the agreement for occupancy, are not selling prepared food at retail.

083.09A If the residential facility contracts with a caterer, restaurant, or other food service provider to provide prepared food to members or residents of the residential facility, the charge to the residential facility is subject to sales and use tax.

083.09B If prepared food is provided to non-members or non-residents for a charge, or if there is a charge for additional prepared food served to the member or resident, the charge is subject to sales and use tax.

083.10 If a recreational, athletic, or summer camp charges a single price for attendance, these charges are not considered sales of prepared food and are exempt from sales and use tax.

083.11 Organizations that conduct fund-raising functions where prepared food and alcoholic beverages are served must compute the tax in accordance with Reg-1-090.09. The organizations may purchase prepared food or alcoholic beverages for these functions for resale.

083.12 If an employer pays to have prepared food or alcoholic beverages provided to its employees, the charge is taxable whether the employer pays the entire price, an amount per meal, or a percentage of the price of a meal.

083.12A Management fees or subsidy payments made by an employer to the provider, that are not based on the number served or the amount charged, are not taxable retail sales.

083.12B Any amount paid by an employee for the prepared food is subject to sales tax.

083.13 If a caterer, restaurant, or other food service provider provides prepared food to its employees, no use tax is due on the ingredients used to provide the free meals because food and food ingredients are not taxable. Any amount paid by an employee for the prepared food is subject to sales tax.

083.14 Concession sales are sales of food, prepared food, or alcoholic beverages made during the conduct of an event or recreational activity. Examples of concession sales include sales made at athletic events, concerts, movies, plays, amusement parks, fairs, and golf courses.

083.14A The sales tax does not have to be separately stated and collected from the customer on concession sales of food, prepared food, and alcoholic beverages. Retailers who do not separately state the sales tax will determine their taxable receipts using the procedure set out in Reg-1-008.03. Including the tax in the sales price does not exempt the concession retailer from reporting and remitting the applicable sales tax on the gross receipts from those sales.

083.14B The concession retailer may separately state and collect sales tax if he or she chooses to do so.

083.14C If more than 75% of the sales of the concession retailer are sales of prepared food under 083.02A or 083.02B as calculated under 083.02C(3), and eating utensils, as defined in 083.02C are available on the premises, the concession retailer must collect sales tax on all its sales.

(Neb. Rev. Stat. §§ 77-2701.16, 77-2703(1)(c), 77-2704.10, 77-2704.24, and 77-2704.25. July 3, 2013.)

REG-1-084 APPLICATION FOR REFUND; AIR OR WATER POLLUTION CONTROL FACILITY

084.01 An air or water pollution control facility shall mean and include any system, treatment works, or appliance used or placed in operation primarily for the purpose of reducing, controlling, or eliminating air or water pollution caused by industrial or agricultural waste. Industrial or agricultural waste shall mean any liquid, gaseous, or solid waste substance resulting from any process of industry, manufacture, including the generation of electricity, trade or business, or from the development, processing, or recovery of any paper or wood which is capable of polluting the air or waters of this state.

084.01A Facilities such as air conditioners, dust collectors, filters, fans, and similar facilities designed, constructed or installed solely for the benefit of the person for whom installed or the personnel of such person, and facilities designed or installed for the reduction or control of automobile exhaust emissions are not air pollution control facilities.

084.02 Before applying for a refund of Nebraska sales and use tax paid, the applicant shall receive a written final findings of the Department of Environmental Quality (DEQ). If DEQ finds that the facility, a portion of a facility, or single location with multiple facilities is designed and operated primarily for control, capture, or removal of industrial or agricultural waste from the air or water and is suitable, reasonably adequate, and meets the intent and purposes of the Environmental Protection Act, DEQ shall notify the owner of the facility in writing of its findings.

084.02A The granting of a permit or approval to operate a facility does not meet the requirements of a written final finding of DEQ for the purposes of the Air and Water Pollution Control Tax Refund Act of the Nebraska Revised Statutes.

084.02B Any finding of DEQ with regard to whether or not a facility or portion of a facility qualifies for the Air and Water Pollution Control Tax Refund Act is not final if it has been appealed or is being reconsidered by DEQ.

084.03 The application for a refund must be filed within three years of the date of payment of the applicable sales and use tax. The necessary forms can be obtained from the Department of Revenue. The application for a refund must be filed separate from any other application, return, or protest and must be accompanied by:

084.03A A copy of the written final findings of DEQ;

084.03B Plans and specifications of such facility including all materials incorporated therein;

084.03C A descriptive list of all equipment acquired by the applicant for the purpose of industrial or agricultural pollution control and showing where in the facility the equipment is used;

084.03D The proposed operating procedure for the facility; and

084.03E The acquisition cost of the facility for which a refund is claimed.

084.04 The owner of any air or water pollution control facility must obtain such information from the contractor and furnish it in support of his or her application for refund where he or she has not purchased the tangible personal property annexed therein.

084.05 No refund shall be allowed under the Air and Water Pollution Control Tax Refund Act on any facility which is not used primarily for pollution control nor for which a refund is otherwise provided under the terms of the Nebraska Revenue Act of 1967, as amended. DEQ shall determine whether or not industrial or agricultural pollution control exists and the Department of Revenue shall determine the amount of sales and use tax to be refunded. The Department of Revenue may not abridge the authority of DEQ to determine whether or not industrial or agricultural pollution control exists. Any person aggrieved by action taken with respect to the determination of the amount of a refund under the Air and Water Pollution Control Tax Refund Act may appeal from the findings and order of the Tax Commissioner in the manner and form and within the time provided by sections 84-917 to 84-919, of the Nebraska Revised Statutes.

(Sections 77-27,149 through 77-27,155, R.R.S. 2003. October 1, 2003.)

REG-1-085 Repealed.

REG-1-086 Repealed.

REG-1-087 FOOD OR FOOD INGREDIENTS

087.01 Sales of food or food ingredients are exempt from sales and use tax.

087.01A Food or food ingredients means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.

087.01A(1) Food or food ingredients includes, but is not limited to: cereals, eggs, fruits, meats, vegetables, milk, health foods consumed in place of other foods and not as a vitamin or mineral supplement, flour, cooking oils, sugar, soft drinks, bottled water, ice, candy, and chewing gum.

087.01A(2) Any food products with the “Nutrition Facts” box on their labels as required by 21 C.F.R. § 101.9, are food or food ingredients that are exempt from sales tax under this section.

087.01B Food or food ingredients does not include alcoholic beverages, dietary supplements, or tobacco.

087.01B(1) Dietary supplement means any product, other than tobacco, intended to supplement the diet that is not presented as conventional food and that is required to be labeled as a dietary supplement, identifiable by the “Supplemental Fact Box” found on the label as required by 21 C.F.R. § 101.36.

087.02 Sales of prepared food, including sales by caterers and concessionaires and all sales of food, prepared food, and food ingredients through vending machines are subject to tax (Reg-1-031, Coin-Operated Machines, and Reg-1-083, Prepared Food and Beverage Service).

(Neb. Rev. Stat. §§ 77-2704.10, 77-2704.24, 77-2704.25, and 77-2704.54. July 3, 2013.)

REG-1-088 COMPUTER SOFTWARE

088.01 The gross receipts from furnishing software regardless of the manner in which it is conveyed are taxable.

088.01A The gross receipts from furnishing software includes services provided by a consultant that result in a transfer of software from the consultant to the client.

088.02 Charges for customer training are taxable whenever paid to the retailer of the software. Charges for training that are paid to a person other than the retailer of the software are exempt.

088.03 Charges for consultants who only provide generalized advice and who do not provide any software or modifications to software are exempt.

088.04 Software that alters existing software is considered separate from the existing software and is taxable.

088.05 Charges for agreements which require the seller, without additional charge or at a reduced price, to provide future enhancements, changes, or modifications, are taxable.

088.06 Computer software is a sequence of instructions which directs the computer to process either digital or analog data. Software does not include data such as mailing lists, even when in machine-readable form, or charges for converting data into machine-usable form. For the taxability of lists see Reg-1-080, Documents.

(Sections 77-2701.39, R.R.S. 2003, and sections 77-2701.16, 77-2701.35, 77-2703(1), and , 77-2703.01, R.S.Supp., 2008. February 22, 2009.)

REG-1-089 ENERGY SOURCE UTILITY EXEMPTION

089.01 The sale, purchase, use, or other consumption of electricity, coal, gas, fuel oil, diesel fuel, tractor fuel, gasoline, coke, nuclear fuel, butane, and compressed fuel that includes compressed natural gas and liquefied petroleum gas (propane) may be exempt from the sales and use tax.

089.01A If more than 50% of the amount purchased is used or directly consumed in processing, manufacturing, refining, generation of electricity, irrigation or farming, or by any hospital the purchase of the fuels listed above is exempt.

089.02 The following definitions and guidelines are to be applied in determining the percentage of exempt energy consumption:

089.02A Processing or manufacturing is defined as an action or series of actions performed upon tangible personal property, either by hand or machine, which results in that tangible personal property being reduced or transformed into a different state, quality, form, property, or thing. Processing includes grain drying and feed grinding in a commercial facility, and the freezing of food products. Processing or manufacturing does not include repairing property, building erection, cold storage of food products, or the preparation of food for immediate consumption.

089.02B Refining is defined as the action or process of removing impurities from crude or impure materials, such as glass, metal, sugar, and petroleum products. Refining includes the extraction of gas and petroleum products.

089.02C Irrigation is defined as the application of water to lands for the raising of agricultural crops.

089.02D Farming is commercial agriculture, which is the business of producing food products, or other useful and valuable crops, or raising animal life. The crops or animal life can either be sold or used by the grower. Commercial agriculture includes commercial production in greenhouses, nurseries, tree farms, sod farms, and feedlots. Commercial agriculture does not include storage of crops off the farm or in commercial elevators, or animal life in stockyards or sale barns. Energy consumed by on-farm grain storage and processing is considered to be consumed in farming.

089.02E Gas is defined as those gases that are burned for energy or oxygen used in welding or cutting metals.

089.03 When determining the percent of exempt use, energy consumed directly in processing, manufacturing, refining, generation of electricity, irrigation, or farming, as defined in this regulation, is used in a qualified use. Energy consumed in heating, cooling, or lighting that portion of the facility directly used in processing, manufacturing, refining, irrigation, or farming, is considered to be for a qualified use. If the purchaser properly determines that more than 50 percent of the energy charge through a single meter is consumed for a qualified use, the entire billing for that meter is exempt from the sales and use tax. However, if the purchaser determines that 50

percent or less of the energy charge through a single meter is consumed for a qualified use, he or she cannot issue an exempt certificate on that meter billing. The entire charge (qualified and nonqualified use) is taxable.

089.03A For purposes of determining the usage percent, a one-year period of consumption will be required. New customers may project their anticipated consumption.

089.03B The use of separate energy meters is acceptable for establishing exemptions within a single facility; however, the taxability of the entire billing for that meter is dependent upon the total energy usage through that meter.

089.04 Fuels commonly used to propel motor vehicles, such as fuel oil, diesel fuel, tractor fuel, and propane are subject to either diesel or compressed fuel tax or sales tax, depending upon their usage.

089.04A At the time fuel oil, diesel fuel, tractor fuel, or propane is placed in a bulk tank which is designed or equipped to fuel vehicles, fuel oil, diesel fuel, tractor fuel, or propane is taxed or exempted under the diesel or compressed fuel rules.

089.04B Fuel oil, diesel fuel, tractor fuel, or propane which is exempt from the sales tax at the time of purchase becomes subject to the consumer's use tax only when consumed for purposes other than for irrigation of crops or to propel any vehicle such as a tractor, fork lift, grader, or bulldozer. This fuel may qualify for exemption under paragraph 089.01A.

089.04C All fuel oil, diesel fuel, tractor fuel, or propane placed in a bulk tank which is not designed to fuel motor vehicles, is taxed or exempted under the sales and use tax regulations.

089.05 The procedure for claiming an exemption from sales and use tax except those claims set forth in sections 089.05A and 089.05B must be supported by properly completing the Nebraska Energy Source Exempt Sale Certificate, Form 13E.

089.05A The exempt sale of diesel or compressed fuel placed in a bulk tank designed or equipped to fuel vehicles does not need to be supported by a certificate of exemption when the quantity purchased and the other records maintained support such exempt sale.

089.05B Diesel fuel that is placed into a supply tank connected to stationary equipment used to irrigate crops is exempt from sales and use tax. Such sales do not need to be supported by a certificate of exemption when the quantity purchased and the other records maintained by the seller support such exempt sale.

089.05C Compressed natural gas or liquefied petroleum gas (propane) that is placed into a supply tank connected to stationary equipment used to irrigate crops is taxable unless the purchaser issues to the seller a Nebraska Energy Source Exempt Sale Certificate, Form 13E.

089.05D An electricity or gas services public utility with a formal classification of usage that reasonably reflects the actual use by the customer, and such usage is for an exempt purpose, does not need to accept an exempt sale certificate from each customer account in the classification. This provision is not to be construed as relieving the consumer of liability for the applicable tax on any such usage.

089.05E Persons furnishing electricity and gas services as public utilities may elect to assume or absorb the applicable sales tax or may elect to pass the tax to the final consumer in the same manner as all other retailers. If the vendor elects to assume or absorb the tax, the utility vendor will remit the applicable tax directly to the Department of Revenue based upon the total charges made to the ultimate consumer. All billings to the ultimate consumer shall contain a statement to the effect that no tax is being collected for customers who are exempt or that the tax has been assumed or absorbed by the vendor for taxable customers.

089.05F In the event the vendor of utility services elects to pass the applicable tax to the final customer, the tax shall be separately stated on all billings; provided, that in lieu of separately stating the tax, the Department of Revenue hereby authorizes the vendor to include a statement on all billings to the effect that the total charge includes sales tax. The gross receipts will be factored to determine the proper amount of tax.

(Section 77-2704.13, R.R.S. 2003. April 12, 2005.)

REG-1-090 NONPROFIT ORGANIZATIONS

090.01 The fact that an organization is nonprofit does not, by itself, entitle the organization to an exemption from payment of sales and use tax on its purchases. Some nonprofit organizations are exempt from payment of the Nebraska sales and use tax on purchases to the extent described in subsections 090.02A through 090.04B of this regulation. Purchases made by these organizations are exempt only after the organization has applied for and received a Nebraska Exempt Organization Certificate of Exemption from the Nebraska Department of Revenue (Department). Religious organizations are discussed in Reg-1-091, Religious Organizations; and educational institutions are discussed in Reg-1-092, Educational Institutions. All other nonprofit organizations are not exempt and must pay sales or use tax. The following nonprofit organizations are exempt from paying sales and use taxes to the extent indicated.

090.02 A nonprofit organization operating any of the following facilities that are licensed under the Health Care Facility Licensure Act is only exempt on purchases for use at the facility, or portion of the facility, covered by the license and on purchases for use outside the facility that are necessary to fulfill the nonprofit organization's requirements to hold or maintain its license. Any purchases by the nonprofit organization for use at facilities not included in the license, or for any other activities are not exempt from the Nebraska sales and use tax.

090.02A A hospital.

090.02B A health clinic, when one or more hospitals, or the parent corporations of the hospitals, own or control the health clinic for the purpose of reducing the cost of health services, or when the health clinic receives federal funds through the United States Public Health Service.

090.02C A skilled nursing facility.

090.02D An intermediate care facility defined in Neb. Rev. Stat. § 71-420, and a intermediate care facility for the mentally retarded defined in Neb. Rev. Stat. § 71-421.

090.02E A nursing facility.

090.02F An assisted-living facility.

090.02G Beginning October 1, 2012, a mental health center.

090.03 A nonprofit organization operating any of the following activities or facilities that are licensed or certified by the Nebraska Department of Health and Human Services, is only exempt on purchases for use in the activity or at the facility, or portion of the facility, covered by the license or certification and on purchases for use outside the activity or facility that are necessary to fulfill the nonprofit organization's requirements to hold or maintain its license or certification. Any purchases by the nonprofit organization for use at the activities or facilities not included in the license or certification, or for any other activities, are not exempt from the Nebraska sales and use tax.

090.03A A licensed child placing or child placement agency.

090.03B A licensed child-caring agency, providing 24-hour daily care, supervision, custody, or control of children, in lieu of care or supervision normally exercised by parents in their own home, that is licensed under Neb. Rev. Stat. §§ 71-1901 to 71-1906.01.

090.03B(1) A licensed child-caring agency does not include an organization providing day care, early childhood programs, or periodic care as defined in Neb. Rev. Stat. § 71-1910.

090.03C An organization providing community-based services for the developmentally disabled that is certified under the Health Care Facility Licensure Act.

090.03D An organization operating a home health agency, hospice, or hospice or respite care service licensed under the Health Care Facility Licensure Act.

090.04 The following nonprofit organizations are exempt from sales and use tax on all purchases:

090.04A A nonprofit organization providing services exclusively to the blind; and

090.04B The State Fair Board.

090.05 The nonprofit organization seeking exemption from payment of sales and use tax must submit a Nebraska Exemption Application for Sales and Use Tax, Form 4, accompanied by the necessary supporting documentation. Exemptions are granted to nonprofit organizations listed under Reg-1-090.02 through Reg-1-090.04B, based on the factual documentation that is presented. In those instances where licensure or certification is a requirement, the Department will contact the state agency responsible for issuing the license to confirm that the license or certification was issued. Nonprofit organizations approved for exemption from payment of sales or use tax are issued a Nebraska Exempt Organization Certificate of Exemption. This certificate assigns the nonprofit organization an exemption number (05-XXXXXXX), which must be used when claiming its exemption.

090.06 The nonprofit organization must give its seller a Nebraska Resale or Exempt Sale Certificate, Form 13, as proof of its exempt status. Section B of this certificate, or an approved substitute form, must be completed in accordance with Reg-1-014, Exempt Sale Certificate.

090.07 Only the nonprofit organization that has been issued a Nebraska Exempt Organization Certificate of Exemption may make purchases to be used by and for the purposes of the nonprofit organization without payment of sales or use tax. Affiliated or subsidiary organizations cannot make tax exempt purchases using an exempt nonprofit organization's exemption certificate, even if they are operating in support of or under the guidance of the exempt organization. The affiliated or subsidiary organization must apply for its own exemption certificate. The affiliated or subsidiary organization may or may not qualify for its own exemption certificate.

090.07A The sales and use tax exemption does not extend to a person purchasing property or services to be given or donated to an exempt nonprofit organization. For these purchases to be tax exempt, the person must donate the funds to the nonprofit organization, and the nonprofit organization must make the purchase. Any person who removes property from inventory that was originally purchased sales tax exempt with a resale certificate, and donates the property to

an exempt nonprofit organization, must remit use tax on the property donated. (Reg-1-035, Consumption of Untaxed Property)

090.07B An exempt nonprofit organization engaging in a construction or repair project will receive the benefit of its tax exempt status by issuing the contractor a Purchasing Agent Appointment, Form 17, and complying with the provisions of Reg-1-017, Contractors. If the exempt nonprofit organization does not issue the contractor a Purchasing Agent Appointment, Form 17, prior to the building materials being annexed to real estate, the exempt nonprofit organization may apply to the Department for a refund of any sales or use tax paid by the contractor on building materials annexed to real estate in the project.

090.07C When a nonprofit organization is engaging in a construction or repair project, it must be licensed or certified to be exempt from sales and use tax. But, if it was not licensed or certified at the time of the purchase, the nonprofit organization must pay sales tax or remit use tax, and cannot issue either a Purchasing Agent Appointment, Form 17, or a Resale or Exempt Sale Certificate, Form 13, to any contractor relating to purchases of building materials for construction or repair performed before licensing or certification. When the nonprofit organization becomes licensed or certified upon completion of the project, it may apply for a refund of the sales tax paid or collected, or the use tax remitted by any contractor on building materials necessary to open the facility and qualify for the license or certification.

090.07D A nonprofit organization required to be licensed or certified to be exempt from sales and use tax, but that is not licensed or certified at the time of the purchase, cannot make tax exempt purchases. When the nonprofit organization becomes licensed or certified upon completion of the project, it may apply for a refund of the sales or use tax paid on the equipment, furnishings, or supplies necessary to open the facility and qualify for the license or certification.

090.07E When a nonprofit organization is required to be licensed or certified to be exempt from sales and use tax, the organization may only make tax exempt purchases during the time that any required license or certification is valid.

090.08 A nonprofit organization is required to collect sales tax on sales of property made by the organization, unless the sale is otherwise exempt. Even an organization exempt from paying sales and use tax under this regulation, is required to collect sales tax on its taxable sales of property and services to the general public or to the members of the organization. Examples include: prepared food, (Reg-1-083, Food Service); copies of records, (Reg-1-080, Documents); and admissions, (Reg-1-044, Admissions).

090.08A Nonprofit organizations making sales of property or services subject to sales tax must apply for a Nebraska Sales Tax Permit using a Nebraska Tax Application, Form 20, and collect sales tax on the gross receipts from these sales.

090.08B Any nonprofit organization may purchase property for resale without paying sales tax if it issues a Nebraska Resale or Exempt Sale Certificate, Form 13, section A, to its seller. This

certificate, or an approved substitute form, must be issued in accordance with Reg-1-013, Sale for Resale-Resale Certificate.

090.09 When a nonprofit organization charges for a fund-raising event that includes either prepared food or an admission for entertainment, recreation, or amusement, and the charge is combined with the solicitation of a contribution, the portion of the amount charged that represents the fair market value of the taxable prepared food or admission received is a retail sale and the nonprofit organization must collect and remit sales tax on that portion.

090.09A The nonprofit organization must determine the fair market value in advance and clearly indicate that amount on any ticket, receipt, or other evidence issued in connection with the payment and report and remit sales tax on that amount.

090.09B If there is no fair market value determined by the nonprofit organization, and there is more than one ticket price, and all purchasers receive substantially the same benefits, the lowest ticket price is presumed to be the fair market value of all tickets sold.

090.09C If there is no fair market value determined by the nonprofit organization, and fair market value cannot be determined under Reg-1-090.09B, the total charge is taxable.

090.10 Charges by committees registered with the Nebraska Accountability and Disclosure Commission, or committees for candidates for federal office, for admission to or for prepared food served at political fund-raising events are exempt from sales or use tax.

090.10A All other sales of property by committees, other than committees for candidates for federal office, are taxable.

090.10B Committees mean ballot question committees, candidate committees, independent committees, and political party committees.

090.11 Purchases by employees or members of the nonprofit organization using their own funds are subject to sales or use tax, even if the purchases are made on behalf of the nonprofit organization, and even if the organization will be reimbursing the employees or members for expenses incurred, including purchases of prepared food and lodging.

(Neb. Rev. Stat. §§ 77-2701.33, 77-2704.10 and 77-2704.12. July 3, 2013.)

REG-1-091 RELIGIOUS ORGANIZATIONS

091.01 Nonprofit organizations created exclusively for religious purposes are exempt from payment of the Nebraska sales or use tax after the organization has applied for and received a Nebraska Exempt Organization Certificate of Exemption from the Nebraska Department of Revenue (Department). This certificate assigns the organization an exemption number (05-XXXXXXX), which must be used when claiming its exemption.

091.02 The nonprofit religious organization must give its seller a Nebraska Resale or Exempt Sale Certificate, Form 13, as proof of its exempt status. Section B of this certificate, or an approved substitute form, must be completed in accordance with Reg-1-014, Exempt Sale Certificate.

091.02A Only the nonprofit religious organization that has been issued a Nebraska Exempt Organization Certificate of Exemption may make purchases to be used by and for the purposes of the nonprofit religious organization without payment of sales or use tax. Affiliated or subsidiary organizations, for example, separately organized day care centers, youth groups, or vacation bible schools, cannot make tax exempt purchases using an exempt nonprofit religious organization's exemption certificate, even if they are operating in support of or under the guidance of the exempt organization. The affiliated or subsidiary organization must apply for its own exemption certificate. The affiliated or subsidiary organization may or may not qualify for its own exemption certificate.

091.02B The sales and use tax exemption does not extend to a person purchasing property or services to be given or donated to an exempt nonprofit religious organization. For these purchases to be tax exempt, the person must donate the funds to the nonprofit religious organization, and the nonprofit religious organization must make the purchase. Any person who removes property from inventory that was originally purchased sales tax exempt with a resale certificate, and donates the property to an exempt nonprofit religious organization, must remit use tax on the property donated. (Reg-1-035, Consumption of Untaxed Property)

091.02C An exempt nonprofit religious organization engaging in a construction or repair project will receive the benefit of its tax exempt status by issuing the contractor a Purchasing Agent Appointment, Form 17, and complying with the provisions of Reg-1-017, Contractors. If the exempt nonprofit religious organization does not issue the contractor a Purchasing Agent Appointment, Form 17, prior to the building materials being annexed to real estate, the exempt nonprofit religious organization may apply to the Department for a refund of any sales or use tax paid by the contractor on building materials annexed to real estate in the project.

091.03 A nonprofit organization that meets the following criteria will be considered as created exclusively for religious purposes. The specific tenets of a particular religion will not be compared or considered by the Department when reviewing an application for tax exempt status.

091.03A The nonprofit organization must affirmatively establish its right to exemption by demonstrating that it is organized and is being operated exclusively for religious purposes. A

mere restatement of the applicant's corporate charter or a statement of its proposed activities will not suffice.

091.03B The nonprofit organization's net earnings cannot be used for private gain or benefit unless the use fulfills a religious or charitable purpose. Upon dissolution, all assets and accumulated earnings must be distributed to an organization exempt under the Internal Revenue Code, § 501(c).

091.03C Exempt status will be granted by the Department only if the applicant's operation and activities are described in sufficient detail to require a conclusion that the nonprofit organization has met the requirements.

091.04 Each application will be examined by the Department to determine if the primary or dominant purpose for which the nonprofit organization has been created is religious, and if that purpose is being carried out in the operations of the organization.

091.05 In reviewing applications from nonprofit organizations seeking an exemption certificate as a religious organization, the Department may examine certain criteria, including, but not limited to, those listed in Reg-1-091.05A through 091.05N. No single criterion is controlling when making a determination of tax exempt status. These criteria include:

091.05A A distinct legal existence;

091.05B A recognized creed and form of worship;

091.05C A definite and distinct ecclesiastical government;

091.05D A formal code of doctrine and discipline;

091.05E A distinct religious history;

091.05F A membership not associated with any other religious organization or denomination;

091.05G A complete organization of ministers ministering to its congregations;

091.05H Ministers selected after completing prescribed courses of study;

091.05I A literature of its own;

091.05J Established places of worship;

091.05K Regular congregations;

091.05L Regular religious services;

091.05M Schools for the religious instruction of the young; and

091.05N Schools for the preparation of its ministers.

091.06 If the Department determines that the applicant is a nonprofit religious organization, it may have other purposes which are incidental when compared to its predominantly religious purposes or goals. In these instances, the applicant may not satisfy all of the criteria set out above.

091.07 A nonprofit religious organization is required to collect sales tax on sales of property by the nonprofit religious organization unless the sale is otherwise exempt. A nonprofit religious organization may make the following sales exempt from sales tax.

091.07A A nonprofit religious organization may sell prepared food at a function of the nonprofit religious organization without collecting sales tax. The activity is a function of the nonprofit religious organization if it is primarily for the members of the organization.

091.07B A nonprofit religious organization may have one annual sale event that is not taxed.

091.07B(1) The sale must be at an activity of the nonprofit religious organization, but it does not have to take place at a location owned by the nonprofit religious organization.

091.07B(2) The sale may last up to three consecutive days.

091.07B(3) The nonprofit religious organization may have the assistance of an auctioneer at this sale without having to collect sales tax on the property or services sold.

091.07B(4) The nonprofit religious organization may sell anything it owns at its sale, except a motor vehicle, trailer, or semi-trailer. The property or services sold may be made especially for the sale, purchased for the sale, or donated to the nonprofit religious organization for the sale.

091.08 Any nonprofit religious organization may purchase property for resale without paying sales tax if it issues a Nebraska Resale or Exempt Sale Certificate, Form 13, section A, to its seller. (Reg-1-013, Sale for Resale-Resale Certificate). This certificate, or an approved substitute form, must be issued in accordance with Reg-1-014, Exempt Sale Certificate.

091.09 Purchases by employees or members of the nonprofit religious organization using their own funds are subject to sales or use tax, even if the purchases are made on behalf of the nonprofit religious organization, and even if the organization will be reimbursing the employees or members for expenses incurred, including purchases of prepared food and lodging.

(Neb. Rev. Stat. §§ 77-2701.24, 77-2703, 77-2704.10, 77-2704.12, and 77-2706. July 3, 2013.)

REG-1-092 EDUCATIONAL INSTITUTIONS

092.01 The following educational institutions are exempt from payment of the Nebraska sales and use tax after the institution has applied for and received a Nebraska Exempt Organization Certificate of Exemption from the Nebraska Department of Revenue (Department):

092.01A A Nebraska public elementary or secondary school, or school district;

092.01B A nonprofit Nebraska private elementary or secondary educational institution established under Chapter 79, article 16;

092.01C A Nebraska community college, established under Chapter 85, Article 15;

092.01D A Nebraska educational service unit, established under the Educational Service Units Act, Chapter 79, Article 12;

092.01E A Nebraska learning community established under Chapter 79, Article 21;

092.01F The Nebraska Center for the Education of Children who are Blind or Visually Impaired, established by Neb. Rev. Stat. § 79-11,109;

092.01G The Nebraska State College System, established under Chapter 85, Article 3;

092.01H The University of Nebraska System, established under Chapter 85, Article 1;

092.01I A nonprofit, private, regionally or nationally accredited college or university with its primary campus located in Nebraska that is authorized under the Postsecondary Institution Act, Chapter 85, Article 24; and

092.01J A conference or other organization, if all the members of the conference or organization are exempt from payment of the Nebraska sales and use tax.

092.02 Schools and other educational institutions not listed in Reg-1-092.01 are not exempt, and must pay sales tax or remit use tax on their taxable purchases. These include, but are not limited to:

092.02A Home schools, other Rule 12 and Rule 13 schools, and all other educational institutions not subject to state approval or accreditation; and

092.02B Schools, colleges, or universities located in another state.

092.03 The educational institution seeking exemption from payment of sales and use tax must submit a Nebraska Exemption Application for Sales and Use Tax, Form 4, accompanied by the necessary supporting documentation. In instances where approval or accreditation is a requirement for an educational institution, the Nebraska Department of Education may be contacted to confirm the approval or accreditation. Educational institutions approved for exemption from payment of sales and use tax are issued a Nebraska Exempt Organization Certificate of Exemption. This certificate assigns the educational institution an exemption number (05-XXXXXXX), which must be used when claiming its exemption.

092.04 The educational institution must give its seller a Nebraska Resale or Exempt Sale Certificate, Form 13, as proof of its exempt status. Section B of this certificate, or an approved substitute form, must be completed in accordance with Reg-1-014, Exempt Sale Certificate.

092.05 Only the educational institution that has been issued a Nebraska Exempt Organization Certificate of Exemption may make purchases to be used by and for the purposes of the educational institution without payment of sales or use tax. Affiliated or subsidiary organizations, including student organizations or parent-teacher-student organizations, cannot make tax exempt purchases using an exempt educational institution's certificate of exemption, even if they are operating in support of or under the guidance of the educational institution.

092.05A The sales and use tax exemption does not extend to a person purchasing property or services to be given or donated to an exempt educational institution. For these purchases to be tax exempt, the person must donate the funds to the educational institution, and the educational institution must make the purchase. Any person who removes property from inventory that was originally purchased sales tax exempt with a resale certificate, and donates the property to an exempt educational institution, must remit use tax on the property donated. (Reg-1-035, Consumption of Untaxed Property)

092.05B An exempt educational institution engaging in a construction or repair project will receive the benefit of its tax exempt status by issuing the contractor a Purchasing Agent Appointment, Form 17, and complying with the provisions of Reg-1-017, Contractors. If the exempt nonprofit educational institution does not issue the contractor a Purchasing Agent Appointment, Form 17, prior to the building materials being annexed to real estate, the exempt nonprofit educational institution may apply to the Department for a refund of any sales or use tax paid by the contractor on building materials annexed to real estate in the project.

092.05C When a private, nonprofit, postsecondary educational institution is engaging in a construction or repair project, it must be regionally or nationally accredited with its primary campus physically located in Nebraska to be exempt from sales and use tax. But, if it was not accredited or located in Nebraska at the time of the purchase, the private, nonprofit, postsecondary educational institution must pay sales tax or remit use tax, and cannot issue either a Purchasing Agent Appointment, Form 17, or a Resale or Exempt Sale Certificate, Form

13, to any contractor relating to purchases of building materials for construction or repair performed before approval or accreditation. When the private, nonprofit, postsecondary educational institution becomes accredited and located in Nebraska upon completion of the project, it may apply for a refund of the sales tax paid or collected, or the use tax remitted by any contractor on building materials necessary to open the facility and qualify for the approval or accreditation.

092.05D A private, nonprofit, postsecondary educational institution required to be accredited and with its primary campus physically located in Nebraska to be exempt from sales and use tax, but that is not accredited or located in Nebraska at the time of the purchase, cannot make tax exempt purchases. When the educational institution becomes accredited and located in Nebraska upon completion of the project, it may apply for a refund of the sales or use tax paid on the equipment, furnishings, or supplies necessary to open the facility and qualify for the license or certification.

092.05E When a private, nonprofit, postsecondary educational institution is required to be accredited to be exempt from sales and use tax, the educational institution may only make tax exempt purchases during the time that any required accreditation is valid.

092.06 An educational institution is required to collect sales tax on sales of property made by the educational institution except for:

092.06A Admissions charged by elementary or secondary schools;

092.06B Admissions charged by school districts, student organizations, or parent-teacher associations to an event or activity held in an elementary or secondary school during the regular school day, or at an approved function of the school;

092.06C Prepared food, soft drinks, and candy, served during the regular school day or at school functions, sold by;

092.06C(1) An elementary or secondary school or school district;

092.06C(2) A student organization or parent-teacher association of an elementary or secondary school; or

092.06C(3) An institution of higher education, public or private, but only if the sale is made at a facility or event that is not open to the public.

092.06D Concession sales of prepared food, soft drinks, and candy by elementary and secondary schools at events including those open to the public;

092.06E Sales by parent-booster clubs, parent-teacher associations, parent-teacher-student associations, or school-operated stores approved by elementary or secondary schools, if the proceeds are used to support school activities or the school itself; or

092.06F Occasional rental of rooms or accommodations regularly used to house students in dormitories or facilities operated by an educational institution established under Chapter 79 or 85 of the Nebraska Revised Statutes.

092.06G For purposes of the exemptions in subsections 092.06A through 092.06F:

092.06G(1) Schools include both public and private elementary and secondary schools; and

092.06G(2) Schools and school districts include organizations of schools and school districts, acting on behalf of its members in carrying out school events, activities, or functions.

092.07 An educational institution making sales of property or services subject to sales tax must apply for a Nebraska Sales Tax Permit using a Nebraska Tax Application, Form 20 and collect sales tax on the gross receipts from these sales.

092.08 Any educational institution may purchase property for resale without paying sales tax if it issues a Nebraska Resale or Exempt Sale Certificate, Form 13, section A, to its seller. This certificate, or an approved substitute form, must be issued in accordance with Reg-1-013, Sale for Resale-Resale Certificate.

092.09 Purchases by employees of the educational institution, or members of parent-booster clubs, parent-teacher associations, or parent-student-teacher associations, using their own funds are subject to sales or use tax, even if the purchases are made on behalf of the educational institution, and even if the educational institution will be reimbursing the employees or members for expenses incurred, including purchases of prepared food and lodging.

(Neb. Rev. Stat. §§ 77-2704.10, 77-2704.12, 77-2704.15, 77-2704.24 and 77-2704.25. July 3, 2013.)

REG-1-093 GOVERNMENTAL UNITS

093.01 Governmental units are only exempt from sales and use tax if they are specifically listed in subsections 093.04 through 093.06 of this regulation. Public educational institutions are discussed in Reg-1-092, Educational Institutions.

093.02 Governmental units are not required to have exemption numbers.

093.03 The United States (U.S.) government, its agencies, instrumentalities, and corporations wholly owned by the U.S. government are exempt from sales and use tax. However, sales to institutions chartered or created under federal authority, but which are not directly operated and controlled by the U.S. government for the benefit of the public, are generally taxable. (See Reg-1-072, United States Government and Federal Corporations, for organizations considered a part of the U.S. government.)

093.04 The following governmental units in Nebraska are exempt from sales and use tax:

093.04A The State of Nebraska;

093.04B A municipality, including a municipal library;

093.04C A county or township, including a county or township library;

093.04D A natural resource district;

093.04E A joint entity or agency formed to fulfill the purposes of the Integrated Solid Waste Management Act;

093.04F A city, county, or joint airport authority;

093.04G An elected county fair board;

093.04H A rural or suburban fire protection district;

093.04I A drainage district;

093.04J A local or regional housing agency, except for purchases for any commercial operation that does not exclusively benefit the residents of the affordable housing project; and

093.04K Wyuka Cemetery.

093.05 A Nebraska irrigation or reclamation district, including one that is part of a Nebraska public power and irrigation district, is exempt from sales and use tax, including any departments or portion of the district that sells electricity, gas, heat, or water.

093.06 A nonprofit corporation formed by an exempt governmental unit listed in sections 093.04 or 093.05 for the sole purpose of issuing tax-exempt bonds to finance one or more projects for the exempt governmental unit is exempt from sales and use tax for building materials, equipment, or other property purchased for the project or projects with the proceeds from the tax-exempt bonds to the same extent the exempt governmental unit would be exempt, if all of the following conditions are satisfied:

093.06A The nonprofit corporation is essentially public in nature;

093.06B The exempt governmental unit holds a beneficial interest in the nonprofit corporation;

093.06C The nonprofit corporation has or will issue bonds on behalf of the exempt governmental unit to finance a project or projects where the interest paid on the bonds is exempt from federal income tax under 26 U.S.C. § 103;

093.06D The project or projects will be the subject of a lease-purchase agreement, financing lease, or other instrument which provides for the transfer of full legal title to the property to the governmental unit when all amounts due under the lease or other instrument are paid and the indebtedness is retired; and

093.06E If a construction project has a total estimated cost greater than \$50,000 or 0.6% of the total actual value of real and personal property of the exempt governmental unit for the previous fiscal year, whichever is greater, the construction project must have been approved by a majority of the voters of the exempt governmental unit at a primary, general, or special election.

093.07 All governmental units not listed in sections 093.04 through 093.06 must pay sales tax or remit use tax on taxable purchases. Governmental units that are not exempt from sales and use tax include, but are not limited to:

093.07A A railroad transportation safety district;

093.07B A rural water district;

093.07C A sanitary and improvement district;

093.07D Another state and any unit of government in another state except that another state, and any unit of government in another state, is tax exempt for purchases of industrial equipment

in this state, including parts for repairs, if the other state grants a similar reciprocal exemption to Nebraska and its units of government; and

093.07E A county weed district board.

093.08 Organizations which are not governmental units, but which assist in performing governmental functions are not exempt from sales or use tax. These organizations include, but are not limited to:

093.08A A volunteer fire department;

093.08B A county agricultural society or county historical society;

093.08C A corporation created under the Nebraska Nonprofit Corporation Act of the Nebraska Revised Statutes;

093.08D An institution chartered or created under federal authority, but not directly operated and controlled by the U.S. government; and

093.08E An organization using funds or grants from governmental units.

093.09 An organization established under the Nebraska Interlocal Cooperation Act entirely by exempt governmental units may make purchases for its use exempt from sales and use tax after the organization has applied for and received a Nebraska Exempt Organization Certificate of Exemption from the Nebraska Department of Revenue (Department). If any of the members are not exempt, then the organization is not exempt for any of its purchases.

093.10 The exempt governmental unit must give its seller a Nebraska Resale or Exempt Sale Certificate, Form 13, as proof of its exempt status. Section B of this certificate, or an approved substitute form, must be completed in accordance with Reg-1-014, Exempt Sale Certificate.

093.11 An exempt governmental unit engaging in a construction or repair project will receive the benefit of its tax exempt status by issuing the contractor a Purchasing Agent Appointment, Form 17, and complying with the provisions of Reg-1-017, Contractors. Except for the State of Nebraska, if the exempt governmental unit does not issue the contractor a Purchasing Agent Appointment, Form 17, prior to the building materials being annexed to real estate, the exempt governmental unit may apply to the Department for a refund of any sales or use tax paid by the contractor on building materials annexed to real estate in the project.

093.12 A governmental unit is required to collect sales tax on sales of property by the governmental unit, unless the sale is otherwise exempt.

092.13 Sales by agencies and corporations of the U.S. government are addressed in Reg-1-072.05.

093.14 Any governmental unit may purchase property tax exempt for resale if it issues a Nebraska Resale or Exempt Sale Certificate, Form 13, section A, to its seller. (Reg-1-013, Sale for Resale-Resale Certificate.) This certificate, or an approved substitute form, must be issued in accordance with Reg-1-014, Exempt Sale Certificate.

093.15 Purchases by employees of the governmental unit using their own funds are subject to sales or use tax, even if the purchases are made on behalf of the governmental unit, and even if the governmental unit will be reimbursing the employees for expenses incurred, including purchases of prepared food and lodging.

093.16 The exemptions granted to any governmental unit listed in 093.04 through 093.06 do not apply to purchases for use in the business of furnishing gas, water, electricity, or heat. The governmental unit will pay sales tax or remit use tax the same as any privately-owned utility company. (Reg-1-066, Sewer and Water, and Reg-1-089, Energy Source Utility Exemption.)

093.16A When property is shared by a taxable department and by an exempt department, (for example, a piece of equipment that is sometimes used by the water department and sometimes used by the sewer department), sales or use tax is due on the portion of the total amount paid that reflects the use by the taxable department.

093.16A(1) The governmental unit may allocate the amount paid for the property between the exempt department and the taxable department by any method that reasonably reflects the use of the property by each department, and pay sales tax or remit use tax on the portion of the sales price that reflects the allocation to the taxable department.

093.16A(2) If a taxable department and tax exempt department divide the cost of the property, the portion of the sales price paid or reimbursed by each department is presumed to reflect the use by each department.

093.16B If a taxable department and an exempt department make simultaneous and continuous use of property, like duct space, pole space, or meters, 100% of the sales price of the property is taxable. Any charges made between departments for simultaneous and continuous use of property are exempt from sales tax.

093.16C For purposes of this section, “department” means a portion of a governmental unit listed in 093.04 through 094.06 that is responsible for a specific function of the governmental unit whether or not that portion has separate accounting, management, or property.

(Neb. Rev. Stat. §§ 2-953.01, 77-2704.15, 77-2704.16, 77-2704.17, and 77-2704.20, and 4 U.S.C. section 107 and 29 U.S.C section 103. July 3, 2013.)

REG-1-094 AGRICULTURAL MACHINERY AND EQUIPMENT

094.01 For the purposes of this regulation, the following definitions will be used.

094.01A Agricultural machinery and equipment shall mean tangible personal property that is used directly in the cultivating or harvesting of a crop, the raising or caring for animal life, or the collecting or processing of an agricultural product on the farm or ranch.

094.01A(1) Agricultural machinery and equipment does not include office equipment, registered or unregistered motor vehicles, well-drilling equipment, handling or processing equipment for agricultural products not on a farm or ranch, or any building or fixture.

094.01B Commercial agriculture is the business of producing food products, or other useful and valuable crops, or raising animal life. The crops or animal life can either be sold or used by the grower to produce other products for sale. Commercial agriculture includes commercial production in greenhouses, nurseries, tree farms, sod farms, and feedlots. Commercial agriculture does not include storage of products off the farm or in commercial elevators, or animal life in stockyards or sale barns.

094.01C Depreciable agricultural machinery and equipment means agricultural machinery and equipment that has a determinable life of longer than one year.

094.01D Purchase is a transfer of title or possession for a consideration. The purchase may occur by sale, conditional sale, sale at auction, or a lease or rental for thirty days or more.

094.02 The purchase of depreciable agricultural machinery and equipment is exempt from the Nebraska and local option sales and use tax if the agricultural machinery and equipment purchased meets all of the following criteria. If any of the criteria are not met, the purchaser is not entitled to an exemption:

094.02A The item purchased is agricultural machinery and equipment;

094.02B It is used in commercial agriculture; and

094.02C The purchaser properly completes a Nebraska Resale or Exempt Sale Certificate, Form 13, Section B.

094.03 Sales of repair and replacement parts for agricultural machinery and equipment used in commercial agriculture are taxable. Charges for labor to repair agricultural machinery and equipment are not taxable provided the charges are separately itemized on the billing invoice.

094.03A The tax paid on purchases of depreciable repair and replacement parts is eligible for a refund, including the tax paid on the related repair or maintenance labor charges.

094.04 Charges for labor to repair a building, structure, or fixture used in commercial agriculture are taxable.

094.05 Personal property tax must be paid on qualified agricultural machinery and equipment and depreciable repair parts, even if sales tax is paid on the item.

(Sections 77-2708, and 77-2708.01, R.R.S. 2003. July 16, 2005.)

REG-1-095 MOLDS, DIES, AND PATTERNS

095.01 Sales of molds or dies to a manufacturer for use in manufacturing are exempt from tax.

095.01A The materials necessary to create the mold or die used in manufacturing and any chemicals, solutions, or catalysts utilized in the mold or die process are all included in the exemption.

095.02 Sales of molds, dies, and patterns that do not qualify as manufacturing machinery and equipment are exempt from tax only when all of the following conditions are met:

095.02A The mold, die, or pattern is designed and fabricated to the special order of a customer;

095.02B The mold, die, or pattern is built specifically for the manufacture of a single product; and

095.02C The mold, die, or pattern is used to produce a product which is either injection molded from plastic or stamped from metal.

095.03 A mold or pattern is a form containing a negative impression into which a softened or fluid material is injected to achieve a predetermined shape.

095.04 A die is a tool mounted on a press and consists of a pair, or a combination of pairs, of mating members which shape or cut metal.

095.05 Injection molding is a process whereby a metered quantity of a heated and plasticized material is injected under pressure into a mold and allowed to solidify. The manufacturing processes of rotational molding, extrusion, compression molding, or blow molding do not qualify as injection molding.

095.06 Metal stamping is the process in which metal is shaped by pressing a die or series of dies against the metal. The process can include operations which blank, punch, bend, iron, redress, emboss, flange, trim, or otherwise shape the metal.

095.07 The exemption for molds, dies, and patterns does not include the machinery or equipment to which the molds, dies, or patterns are connected or attached. The exemption does not apply to the purchase of raw materials or individual parts which will be fabricated into a mold, die, or pattern where the fabricator is considered the final consumer of the mold, die, or pattern.

095.08 The exemption applies to charges for modifications made to a qualifying mold, die, or pattern or to any repair or replacement parts of a qualifying mold, die or pattern.

(Section 77-2704.40, R.R.S. 2003. February 22, 2009.)

REG-1-096 MOTORBOATS

096.01 Motorboat as used in this regulation shall mean any watercraft included under Section 37-1204 of the Nebraska Revised Statutes. Every motorboat dealer in Nebraska is required to obtain a sales tax permit for each place of business in this state even though they make no sales other than sales of motorboats. The dealer shall file a tax return reporting gross sales in the same manner as all other retailers.

096.01A Motorboats means any watercraft propelled by a permanently or temporarily attached motor and shall include, among others, open or closed bow outboards, inboards, inboard/outboard boats, personal watercraft (jet skis, wave runners), air boats, cabin cruisers, houseboats, pontoons, canoes, jon boats, sail boats, and rowboats.

096.01B If a trailer is sold with a motorboat, the dealer must separately state the selling price of the trailer on the purchaser's invoice and furnish the purchaser with a Nebraska Sales/Use Tax and Tire Fee Statement for Motor Vehicles and Trailer Sales, Form 6, for the trailer.

096.02 The sales and use tax imposed upon the sale of a motorboat shall be the liability of the purchaser and the tax shall be collected by the county treasurer or other designated county official at the time the purchaser makes application for registration of the motorboat for operation in this state. If the purchaser retains such motorboat in this state and does not register it for operation within thirty days of the purchase date, the tax shall be paid immediately to the county treasurer or other county official. If the tax is not paid within thirty days of the purchase date, the county treasurer or other designated official shall collect the tax, interest from the thirtieth day until the date of payment, and a penalty of five dollars (\$5.00).

096.03 The dealer or seller is not authorized to collect the tax on the sale of motorboats but shall, at the time of the sale, state on the sales invoice the dollar amount of the tax and furnish the purchaser a Nebraska Sales and Use Tax Statement for Motorboat Sales, Form 6MB.

096.03A The tax due shall be computed on the difference between the total sales price and the total of any trade-in allowance for another motorboat taken by any person and any rebates used to reduce the selling price of the motorboat.

096.03A(1) The selling price of a motorboat includes charges for the boat, motor, destination fees, import custom fees, document processing fee, and warranty transfers. The selling price also includes charges for accessories, and service and maintenance agreements unless such charges are separately invoiced. When these charges are separately invoiced the dealer or seller collects and remits sales tax on these charges.

096.03B All information requested by the Nebraska Department of Revenue must be furnished and a copy of each Form 6MB must be sent to the Nebraska Department of Revenue by the seller at the time the sales and use tax return is filed. Any dealer or seller who fails or refuses to furnish such information may be found guilty of a misdemeanor and shall, upon conviction, be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00) for each offense.

096.03C Any dealer or seller who willfully prepares a false or fraudulent sales or use tax return or Form 6MB may be found guilty of a Class IV felony and shall, upon conviction, be fined not more than ten thousand dollars (\$10,000.00), or be imprisoned not more than five years, or both.

096.03D Any purchaser, or agent thereof, who completes Nebraska Sales and Use Tax Statement for Motorboat Sales, Form 6MB, claiming an exemption for any purchase which is not exempt from sales and use tax under sections 77-2701 through 77-27,135 of the Nebraska Revised Statutes, shall be subject to a penalty of one hundred dollars (\$100.00) or ten times the tax, whichever amount is larger. Any purchaser, or agent thereof, who fraudulently signs a Form 6MB with the intention to avoid payment of the tax may, in addition to the above penalty, be found guilty of a class IV misdemeanor.

096.03E Any seller who willfully understates the amount upon which the sales tax is due shall be subject to an administrative penalty of one thousand dollars (\$1,000.00).

096.04 County treasurers or other designated county officials are appointed as sales and use tax collectors for all sales of motorboats made outside of this state to purchasers and users of motorboats required to be registered in this state. The county treasurer, or other designated county official, shall collect the applicable use tax from the purchaser of a motorboat purchased outside of this state at the time application for registration is made. The full use tax on the purchase price shall be collected by the county treasurer or other designated county official if a sales or occupation tax was not paid by the purchaser in the state of purchase. If a sales or occupation tax was lawfully paid in the state of purchase at a rate less than the tax imposed in this state, use tax must be collected on the difference as a condition for registration in this state.

096.05 The purchase of a licensed motorboat may be exempt for any of the following reasons:

096.05A If the owner of a motorboat is, or was, a nonresident of this state and establishes as a fact that he or she purchased the motorboat outside of this state and there registered and titled the motorboat, then the use tax is not required for licensing or registering in this state;

096.05B The motorboat is purchased for the purpose of renting or leasing with the rental or lease payment set at a fair market value, and the purchaser holds a sales tax permit so as to remit tax on the lease or rental receipts;

096.05C The motorboat is a gift to the applicant or received through inheritance and tax was previously paid by the donor or prior owner;

096.05D The purchase of the motorboat is exempt under paragraphs 012.02C or 012.02D of Reg-1-012, Exemptions;

096.05E The motorboat is sold pursuant to an occasional sale as set out in Reg-1-022, Occasional Sales.

096.06 If the purchase of a licensed motorboat is exempt for any of the reasons in paragraph 096.05, the county treasurer or other designated county official may, after obtaining a properly completed Form 6MB accurately identifying the basis of exemption, complete the registration without collecting the tax.

096.07 The lessor of a motorboat must collect tax on the gross receipts from rental or lease of a motorboat which is registered for operation within this state and which is rented or leased for periods of one year or more or which is delivered by the lessor within this state and is rented or leased for a period of less than one year.

096.08 A rebate received by the purchaser from a manufacturer after the sale does not reduce the sales and use tax base. The retail price remains at the amount agreed upon at the time of the sale which is the amount upon which the tax must be collected.

096.08A A rebate received from a manufacturer that is used to reduce the selling price of the motorboat reduces the sales and use tax base. A rebate is used to reduce the selling price of the motorboat when it is transferred to the dealer at the time of the sale and is shown on the sales invoice as a price reduction, partial payment, or a down payment.

(Sections 77-2701.24, and 77-2701.35, R.R.S. 2003, and sections 77-2701.16, 77-2703(1)(j), and 77-2703.01, R.S.Supp., 2004. July 16, 2005.)

REG-1-097 DIRECT PAYMENT PERMIT

097.01 Companies that are issued a direct payment permit are authorized to pay the proper Nebraska and local sales tax on certain purchases directly to the Nebraska Department of Revenue (Department) in lieu of paying the sales tax to the seller.

097.02 Companies may apply for a direct payment permit by completing a Nebraska Application for Direct Payment Authorization, Form 20DP, and paying the nonrefundable \$10 application fee. If the application is approved, a direct payment permit will be issued.

097.03 In order to qualify for a direct payment permit, the applicant must meet the following conditions:

097.03A The company must have annual taxable purchases in Nebraska of property and services totaling at least \$3 million. Taxable purchases exclude purchases for resale;

097.03B The company must demonstrate that its system of accruing tax on purchases is adequate for accruing tax on all taxable purchases; and

097.03C The company must agree to accrue and pay all sales and use taxes to the Department on or before the 20th day of the month following the date of purchase, lease, or rental.

097.04 The holder of a direct payment permit will not receive any collection fee on those taxes due on taxable property purchased under the direct payment permit.

097.05 The holder of a direct payment permit cannot use the permit for the following transactions:

097.05A Cash purchases;

097.05B Purchases of motor vehicles, motorboats, all-terrain vehicles, and utility-type vehicles;

097.05C Purchases of lodging and related services;

097.05D Purchases of food or beverages;

097.05E Purchases of admissions; and

097.05F Purchases for resale.

097.06 The company-must accept responsibility for use by any other company to which the direct payment permit has been delegated.

097.07 The holder of a direct payment permit must furnish a copy of the direct payment permit to each seller for purchases of taxable property or services on which an exemption is claimed.

097.07A The holder of a direct payment permit must keep a current list of all sellers from whom purchases are made under the direct payment permit, and submit the list for examination upon request of the Tax Commissioner.

097.07B If the permit is revoked or relinquished, the holder of the permit must notify all sellers who have been furnished copies of the permit that the permit is no longer valid.

097.08 If a seller receives a direct payment permit from a purchaser, the seller is relieved from the obligation to collect tax on taxable sales. A copy of the direct payment permit must be maintained in the records of the seller.

097.08A The holder of a direct payment permit may use the permit to make tax-exempt purchases of computer software, digital goods, or services that will be concurrently available for use in more than one jurisdiction.

097.08B The holder of a direct payment permit may also use the permit to make tax-exempt purchases of direct mail as defined in Reg-1-105. Sales tax will be remitted based on the requirements of Reg-1-105. A certificate of exemption for direct mail is not required for direct mail purchases.

097.09 The tax that is remitted by a company issued a direct payment permit is a sales tax. The company issued a direct payment permit cannot claim an exemption under Reg-1-002E on items purchased from any Nebraska licensed seller or from any seller engaged in business in Nebraska.

097.10 Items purchased under the special permission letter of exemption for certain common carriers as provided in Reg-1-015 and delivered in Nebraska are not subject to sales and use tax when shipped outside Nebraska, even though the same company has been granted the authority to operate under the provisions of the direct payment permit program for sales and use tax purposes.

097.11 The direct payment permit can be delegated to another company if the holder of the permit has at least an 80% ownership of the other company.

097.12 The Tax Commissioner may revoke a direct payment permit any time the holder of the permit no longer qualifies for the issuance of a permit, fails to comply with the conditions under which the permit was issued, or for any other reason constituting misuse of the permit.

(Neb. Rev. Stat. §§ 77-2703(1)(f), 77-2705, 77-2705.01, 77-2705.02, and 77-2705.03. June 24, 2017.)

REG-1-098 BUILDING CLEANING AND MAINTENANCE

098.01 Gross receipts from building cleaning and maintenance services are taxable.

098.02 Building cleaning and maintenance services include both interior and exterior cleaning of commercial and residential buildings, homes, apartments, outbuildings, and agricultural buildings.

098.03 Building cleaning and maintenance services include:

098.03A Cleaning and maintenance of tangible personal property located in a building, and fixtures or any property annexed to real estate that is attached to, is a part of, or is enclosed in, a building; and

098.03B Cleaning and maintenance services performed after fires, floods, or other natural disasters.

098.04 Building cleaning and maintenance services do not include:

098.04A Repairs to fixtures or property annexed to real estate; (See Reg-1-017 for the taxation of repairs to fixtures or annexed property.)

098.04B Cleaning of annexed property that is not attached to, a part of, or enclosed in, a building.

098.05 Service contracts that provide for building cleaning or maintenance service are taxable. (Reg-1-074, Warranties and Guarantees.)

098.06 Charges to property owners by property management companies that include building cleaning and maintenance services as a part of their management services are not taxable. Any additional charges to the property owner for building cleaning and maintenance services are taxable. Property management companies are the consumers of building cleaning and maintenance services they purchase for buildings they manage.

098.07 A building cleaning and maintenance service provider must pay sales or use tax on all purchases of materials, equipment, and supplies, including trash can liners, paper products, soap, and waxes, used to provide his or her cleaning and maintenance services.

098.08 Buildings and fixtures are defined in Reg-1-017, Contractors.

(Section 77-2702.07, R.R.S. 2003. October 1, 2003.)

REG-1-099 MOTOR VEHICLE SERVICES

099.01 Gross receipts from certain services performed on motor vehicles are subject to tax. The taxable services include motor vehicle towing, motor vehicle washing and waxing, motor vehicle painting, and the installation of accessories or equipment on motor vehicles.

099.02 Motor vehicles as used in this regulation shall mean automobiles, trucks, trailers, semitrailers, and truck tractors as defined in Section 60-301 of the Nebraska Revised Statutes.

099.03 Motor vehicle towing.

099.03A Motor vehicle towing includes, but is not limited to, towing or transporting a vehicle from one location to another location, recovering a vehicle from a ditch, or uprighting an overturned vehicle.

099.03A(1) Charges for towing of common carrier vehicles are taxable.

099.03B Motor vehicle towing does not include the towing of other property or vehicles that are not defined as motor vehicles, or the delivery of inventory motor vehicles to a licensed motor vehicle dealer.

099.03C The charge for motor vehicle towing is taxable if the motor vehicle is delivered in Nebraska. The charge for towing a motor vehicle picked up in another state and delivered in Nebraska is taxable in this state. The charge for towing a motor vehicle picked up in Nebraska and delivered in another state is not taxable in this state.

099.04 Motor vehicle washing and waxing.

099.04A Motor vehicle washing and waxing includes washing or cleaning, waxing, polishing, or detailing the interior or the exterior of a motor vehicle.

099.04A(1) Charges for washing or waxing of common carrier vehicles are taxable.

099.04A(2) Charges for washing or waxing of inventory motor vehicles of licensed motor vehicle dealers are taxable.

099.04B For the proper calculation of the tax from coin-operated wash facilities see Reg-1-031, Coin-operated Machines.

099.04C Any person providing motor vehicle washing and waxing services must pay sales or use tax on all purchases of materials, equipment, and supplies, including towels, soaps, and waxes, used to provide his or her services.

099.05 Motor vehicle painting.

099.05A Motor vehicle painting includes, but is not limited to, refinishing, sealing, or applying rust protection or clear coat to motor vehicles.

099.05A(1) Motor vehicle painting also includes the labor and services necessary to prepare the vehicle, or parts of the vehicle, for painting or to clean the vehicle after painting.

099.05A(2) Motor vehicle painting does not include the replacement of parts or any repairs to a motor vehicle other than the repair of the finish or coatings on the vehicle.

099.05B Any person providing motor vehicle painting services must pay sales or use tax on all purchases of materials, equipment, and supplies, including sandpaper, compounds, tape, and cleaners, used to provide his or her services.

099.06 Installation of accessories or equipment.

099.06A The charges for the installation of accessories or equipment on a motor vehicle are taxable.

099.06A(1) The installation of accessories or equipment on a motor vehicle includes, but is not limited to, adding a radio or CD player, running boards, trailer hitches, bed liners, window tinting, or a moon roof.

099.06B The installation of accessories or equipment does not include the replacement of a nonfunctioning part or component of the motor vehicle with a comparable part or component.

099.06C For the taxability of installation of equipment for transporting medically disabled persons, such as wheelchair lifts see Reg-1-050, Medicines and Medical Equipment.

099.07 Any person providing services on motor vehicles must pay sales or use tax on all purchases of materials, equipment, and supplies used to provide his or her services.

(Section 77-2702.07, R.R.S. 2003. October 1, 2003.)

REG-1-100 PEST CONTROL SERVICES

100.01 Gross receipts from pest control services are taxable.

100.02 Pest control services are those services intended to inspect for, detect, eliminate, neutralize, or control pests.

100.03 For the purposes of this regulation, pests include animals that infest buildings, plants, lawns, and any other property. Pests include, but are not limited to:

100.03A Spiders, mites, ticks, ants, wasps, and other insects;

100.03B Termites and other wood infesting organisms;

100.03C Rodents, snakes, birds, or other animals; and

100.03D Grubs and worms.

100.04 Charges by lawn service providers who apply pest control chemicals are taxable. A single application containing both pest control chemicals and other chemicals is taxable.

100.05 A pest control service provider must pay sales or use tax on all purchases of materials, equipment, and supplies used to provide his or her services.

100.06 Service contracts for pest control services are taxable. (Reg-1-074, Warranties and Guarantees)

100.07 Charges for applying agricultural chemicals to land, crops, or animals in commercial agriculture are not taxable. (Reg-1-061, Agricultural Chemicals, and Reg-1-63, Feed and Water for Animal Life)

(Section 77-2702.07, R.R.S. 2003. October 1, 2003.)

REG-1-101 SECURITY AND DETECTIVE SERVICES

101.01 Gross receipts from providing security and detective services are taxable.

101.02 Security services include those services to protect property from theft, vandalism, or destruction or to protect individuals from harm including physical attack or harassment. Security services include, but are not limited to:

101.02A Body guard, security patrol, or armored car services;

101.02B Planning for or consulting on security services;

101.02C Training in security measures or training persons or animals to provide security services; and

101.02D Monitoring and maintenance of security or surveillance systems, including installing, testing, cleaning, adjustment, or repair of the equipment. (See Reg-1-017, Contractors, for taxation of annexation or repair of property annexed to real estate.)

101.03 Detective services are those services provided by licensed detectives or licensed detective agencies in the business of investigating to obtain information for others. Detective services include, but are not limited to:

101.03A Background, employment, or criminal investigations;

101.03B Surveillance;

101.03C Obtaining evidence, or recovery of lost or stolen property; and

101.03D Polygraph or voice stress examinations.

101.04 Security or detective services provided by an employee to his or her employer are not taxable.

101.05 Security and detective services provided by the state or a political subdivision of the state in a governmental capacity are not taxable even if a charge is made.

101.05A Security or detective services provided by off-duty police officers are taxable unless the payment is made by a political subdivision.

101.06 A security or detective service provider must pay sales or use tax on all purchases of materials, equipment, and supplies used to provide his or her services.

(Section 77-2702.07, R.R.S. 2003. October 1, 2003.)

REG-1-102 ANIMAL SPECIALTY SERVICES

102.01 Gross receipts from animal specialty services are subject to tax, except for animal specialty services provided to livestock. Animal specialty services provided to animal life of a kind, the products of which ordinarily constitute food for human consumption or of a kind, the pelts of which ordinarily are used for human apparel, are taxable unless these animals are also livestock as defined in this regulation.

102.01A Livestock means domesticated cattle, horses, mules, donkeys, sheep, and swine. All other animals are not considered livestock for the purposes of this regulation.

102.02 Animal specialty services include, but are not limited to:

102.02A Boarding or caring for an animal;

102.02B Grooming;

102.02C Training, exercising, or handling;

102.02D Animal waste removal;

102.02E Breeding or insemination services;

102.02F Identification implants; or

102.02G Cremation, burial, or disposal services.

102.03 Animal specialty services do not include:

102.03A Professional services, including hospitalization, by a veterinarian as defined in Reg-1-078, Veterinarians;

102.03B Animal grooming performed by a licensed veterinarian or a licensed veterinary technician in conjunction with medical treatment;

102.03C Breeding or insemination services for use in ranching, farming, commercial, or industrial uses;

102.03D Impound fees set by local ordinance or amounts collected by animal control agencies for violations of local ordinances.

102.04 An animal specialty provider must pay sales or use tax on all purchases of materials, equipment, and supplies, including shampoos, flea and tick treatments, and food, used to provide his or her services.

(Section 77-2701.16, R.R.S. 2009. June 6, 2011.)

REG-1-103 RECREATIONAL VEHICLE PARK SERVICES

103.01 Gross receipts from recreational vehicle park services are subject to tax. The sales tax will continue to apply even if the service is provided for more than thirty (30) days.

103.01A Recreational vehicles include motor homes, trailers, pickup campers, and any other vehicle used to live in or for camping.

103.02 Recreational vehicle park services are those services provided by parks, campgrounds, mobile home parks, or other places offering facilities for recreational vehicles. Recreational vehicle park services include, but are not limited to:

103.02A Pads or sites for recreational vehicles;

103.02A(1) The charge for the use of a pad or site suitable for use by a recreational vehicle is taxable even if it is used by tent campers or by persons not using hook-ups or other amenities.

103.02B Utility hook-ups and dump stations; and

103.02C Showers or other amenities.

103.03 Recreational vehicle park services do not include:

103.03A Sites or areas restricted to tents;

103.03B Storage spaces for recreational vehicles where occupancy is not permitted;

103.03C Coin-operated laundry facilities. (Reg-1-048, Laundries and Dry Cleaners.)

103.04 Recreational vehicle park service providers must pay sales or use tax on all purchases of materials, equipment, and supplies used to provide their services.

(Section 77-2702.07, R.R.S. 2003. October 1, 2003.)

REG-1-104 REPEALED

REG-1-105 DIRECT MAIL

105.01 Direct mail means printed material delivered or distributed by U.S. mail or other delivery service to a mass audience or to addresses on a mailing list provided by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. Direct mail includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material. Direct mail does not include multiple items of printed material delivered to a single address.

105.01A Advertising and promotional direct mail means direct mail that is intended to attract public attention to a product, person, business, or organization or attempt to sell, popularize, or secure financial support for the same. Advertising and promotional direct mail includes, but is not limited to: flyers, brochures, and catalogs.

105.01B Other direct mail includes transactional documents that contain personal information specific to the addressee, such as billing invoices and bank statements, or legal mailings such as privacy notices and stockholder reports. Other direct mail does not include the development of billing information or data processing services that are more than incidental to the transaction.

105.02 Sales of advertising and promotional direct mail and other direct mail are exempt from sales tax when the purchaser furnishes the seller with a certificate of exemption for direct mail.

105.02A The purchaser issuing the certificate of exemption for direct mail is responsible for remitting use tax on material delivered to locations within Nebraska. The tax is due on the Nebraska portion on or before the 20th day of the month following the close of the reporting period.

105.02B A certificate of exemption for direct mail remains in effect until it is revoked, in writing, by the purchaser.

105.03 In lieu of a certificate of exemption for direct mail, purchasers of advertising and promotional direct mail may furnish the seller with delivery information showing the jurisdictions to which the advertising and promotional direct mail is delivered.

105.03A If the purchaser is unable to provide the seller with information showing the state and local jurisdictions to which the advertising and promotional direct mail is delivered, the purchaser may utilize any reasonable, consistent, and uniform method of allocating the sale to the jurisdictions of delivery. Acceptable methods of allocation include:

105.03A(1) Population in the jurisdictions of delivery as a percentage of the total population in the distribution area;

105.03A(2) Percentage of customer accounts in the jurisdictions of delivery as a percentage of the total number of customer accounts of the purchaser; or

105.03A(3) Summary by zip code.

105.03B The seller must collect sales tax on the gross receipts from the sale of advertising and promotional direct mail delivered to locations within Nebraska.

105.04 If the purchaser of advertising and promotional direct mail does not provide the seller with either a certificate of exemption, delivery information, or an allocation method under Reg-1-105.03A, the seller must collect sales tax on sales of advertising and promotional direct mail based upon the address from which the advertising and promotional direct mail was shipped.

105.05 If the purchaser of other direct mail does not provide the seller with a certificate of exemption, the seller must collect sales tax on sales of other direct mail based upon the purchaser's address.

105.06 The sales tax paid to the seller under either sections 105.04 or 105.05 does not constitute a properly-paid tax for purposes of allowing credit against the use tax due to the state or locality based upon the delivery locations.

105.07 A properly completed certificate of exemption for direct mail received from the purchaser is conclusive proof for the seller that the sale is exempt.

105.08 The Nebraska Department of Revenue (Department) will recognize only the Streamlined Sales and Use Tax Agreement (SSUTA) certificate of exemption for direct mail or a previously-approved substitute for this certificate. To be properly completed, the certificate of exemption for direct mail must include all of the following:

105.08A Identification of both the purchaser and retailer including the type of business engaged in by the purchaser;

105.08B The use tax or sales tax permit number of the purchaser. If the purchaser has no permit number, state the reason;

105.08C An authorized signature or other form of authorization as required by the SSUTA; and

105.08D The date of issuance.

105.09 Any purchaser, or the agent for the purchaser, who gives a certificate of exemption for direct mail or delivery instructions to the retailer covering purchases of advertising and promotional direct mail which are not for delivery to a mass audience, is subject to a penalty of \$100 or ten times the tax, whichever amount is larger, for each instance of presentation and misuse. The penalty applies to each purchase made during the period the certificate is in effect.

105.10 Any purchaser, or the agent for the purchaser, who fraudulently signs a certificate of exemption for direct mail or provides delivery instructions with intent to avoid payment of the tax may, in addition to the penalty set out in section 105.09, be found guilty of a Class IV misdemeanor.

105.11 The Department may make and retain copies of any certificates of exemption for direct mail or any delivery instructions received from the purchaser.

(Neb. Rev. Stat. §§ 77-2701.12, 77-2703.03, and 77-2713(5). June 24, 2017.)

REG-1-107 MANUFACTURING MACHINERY AND EQUIPMENT EXEMPTION

107.01 The sale, lease, or rental of manufacturing machinery and equipment to a manufacturer for use in manufacturing is exempt from tax.

107.02 Manufacturer means a person who is primarily engaged in the business of manufacturing. Persons are primarily engaged in the business of manufacturing if more of their total annual revenues are derived from the sales of products they manufacture and sell as tangible personal property, or from production labor as defined in Reg-1-082.02A performed on products sold as tangible personal property by other manufacturers than from any other commercial activity.

107.02A A manufacturer does not include any person who derives more of its total annual revenues from selling annexed property, selling services, selling intangible property, making retail sales, generating electricity, producing or transmitting information, programming, or data, providing food or drink service, purifying or transporting water, mining or quarrying, or engaging in any other business than from the business of manufacturing.

107.02B Sales of products or materials that are annexed to real estate, either by the seller or a subcontractor of the seller, are not sales of tangible personal property.

107.02C Total annual revenues means revenues from all of the activities, locations, divisions, departments, or operations of the person, both within and outside this state, and includes sales of annexed property, tangible personal property, services, or intangibles. Total annual revenues are measured over a period of 12 consecutive months, including the month in which the manufacturing machinery and equipment is placed in service.

107.03 Manufacturing means an action, or series of actions, performed upon tangible personal property, either by hand or machine, which results in that tangible personal property being reduced or transformed into a different state, quality, form, property, or thing. Manufacturing requires a physical change to the tangible personal property and does not include an increase in the value of a product without a physical change. Manufacturing does not include:

107.03A Generation or transmission of electricity;

107.03B Growing or caring for crops or animal life;

107.03C Mining, quarrying, and any other activity performed in severing raw materials or other property from the ground;

107.03D Preparation of food for immediate consumption;

107.03E Production or transmission of data;

107.03F Production or transmission of information;

107.03G Production or transmission of programming, including computer software;

107.03H Purification or transportation of water;

107.03I Retail operations; or

107.03J Sorting, cleaning, or repackaging of property, or breaking bulk quantities of property into smaller units or packages.

107.04 Manufacturing machinery and equipment used in manufacturing includes:

107.04A Chemicals, solutions, or catalysts when utilized in a mold or die process;

107.04B Computers, software, and related peripheral equipment used to guide, control, operate, or measure the manufacturing process;

107.04C Machinery and equipment used by a manufacturer to produce steam, electricity, or chemical catalysts and solutions that are essential to the manufacturing process even if the produced items are consumed during the manufacturing process, but does not include the chemical catalysts and solutions themselves (See subsection 1-107.05B);

107.04D Machinery and equipment used to maintain the integrity of the product or to maintain the unique environmental conditions necessary for either the product or the manufacturing machinery and equipment. Heating, ventilating, and cooling the workplace to make conditions suitable for employees is not maintaining unique environmental conditions;

107.04E Machinery and equipment used to produce, fabricate, assemble, process, finish, refine, or package tangible personal property for sale;

107.04E(1) Machinery and equipment includes items attached to manufacturing machinery and equipment, which facilitate its operations or functions, such as drill bits or sanding belts.

107.04F Machinery and equipment used to transport, convey, handle, or store the raw materials or components used in manufacturing, or the products produced by the manufacturer for sale. This includes forklifts and other motorized vehicles used within the manufacturing facility, but does not include any containers used to transport the manufactured products to customers. (See Reg-1-107.05D);

107.04G Materials and parts purchased by a manufacturer to construct its own machinery and equipment, or its own molds and dies used in its manufacturing process;

107.04H Molds and dies used to determine the physical characteristics of the finished product or its packaging material;

107.04I Testing equipment used to measure the quality of the finished product. This includes machinery and equipment used during the manufacturing process to measure the quality of the item being manufactured, but does not include any equipment used in research and development to improve existing products or develop new products; and

107.04J Tools powered by sources other than human effort, such as electricity, battery, or compressed air.

107.05 Manufacturing machinery and equipment does NOT include:

107.05A Building materials purchased by a manufacturer to attach, anchor, house, enclose, or supply external power to machinery and equipment used in its manufacturing process;

107.05B Chemicals, solutions, and catalysts, except those utilized in a mold or die process, whether or not such items are essential to the manufacturing process;

107.05C Computers, software, and related peripheral equipment which are not used in guiding, controlling, operating, or measuring the manufacturing process;

107.05D Containers used to transport the manufactured product to customers including, but not limited to, pallets, tanks for welding gases, and bottles. Containers will be taxed or exempted pursuant to the provisions of Reg-1-043, Containers;

107.05E Hand tools. Hand tools means only those tools that are held in the hand and are powered solely by human effort;

107.05F Machinery and equipment used in research and development;

107.05G Office equipment;

107.05H Supplies and other items consumed by a manufacturer whether or not such items are essential to the manufacturing process, such as solvents or cutting oils; and

107.05I Vehicles required to be registered for operation on the roads and highways of this state and items attached to the vehicles.

107.06 Person means any individual, firm, partnership, limited liability company, joint venture, association, corporation, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, or other group or combination acting as a unit.

107.07 When machinery and equipment is used for both manufacturing and for other purposes, the manufacturing use must be more than 50 percent of the total use to qualify for the exemption specified in this regulation. When a manufacturer claims an exemption for manufacturing machinery and equipment, it must maintain records clearly showing that it used the machinery and equipment more than 50 percent of the time in its manufacturing process.

107.08 Option 2 or Option 3 contractors who purchase and annex manufacturing machinery and equipment for a manufacturer must pay sales or use tax on their cost of the manufacturing machinery and equipment or the parts and components of the manufacturing machinery and equipment. Option 2 and Option 3 contractors may not accept an exemption certificate from a manufacturer for annexed manufacturing machinery and equipment.

107.09 Repair or replacement parts or accessories purchased by a manufacturer and used in maintaining, repairing, or refurbishing manufacturing machinery and equipment are exempt from tax.

107.09A Persons who do not qualify as a manufacturer in any year must pay tax on all purchases of repair parts and repair labor for the manufacturing machinery and equipment made during that year, even if the manufacturing machinery and equipment was exempt when it was purchased.

107.09B Option 2 or Option 3 contractors must pay tax on their purchases of repair or replacement parts used to repair annexed manufacturing machinery and equipment.

107.10 Purchases by a manufacturer of installation, repair, or maintenance services performed on exempt manufacturing machinery and equipment are exempt from tax.

107.11 Purchases by a manufacturer of warranties, guarantees, or maintenance agreements covering exempt manufacturing machinery and equipment are exempt from tax.

107.11A Option 2 or Option 3 contractors must pay tax on their purchases of repair or replacement parts used to fulfill their obligations under these agreements.

107.12 A retailer may make a tax-free sale of manufacturing machinery and equipment and any property or service identified in Reg-1-107.04 when the manufacturer issues the retailer either a properly completed Nebraska exemption certificate or another exemption form approved by the Department of Revenue under Reg-1-014, Exempt Sale Certificate.

107.12A An Option 1 contractor may accept an exemption certificate from a manufacturer and not collect tax on annexed manufacturing machinery and equipment.

(Sections 77-2701.46, 77-2701.47, and 77-2704.22 R.R.S. 2009. June 6, 2011.)

REG-1-108 BUNDLED TRANSACTIONS

108.01 Receipts from the sale of bundled transactions are taxable when one or more of the products included in the bundle are taxable.

108.02 Bundled transaction means the retail sale of two or more distinct and identifiable products which are sold for one, nonitemized price.

108.02A Bundled transactions do not include sales involving real property or services to real property.

108.02B The following items are not considered distinct and identifiable products for purposes of determining if a bundled transaction exists:

108.02B(1) Containers, boxes, sacks, bags, labels, tags, and other packaging that accompanies the sale of the product;

108.02B(2) Products provided free-of-charge with the required purchase of another product; and

108.02B(3) Components of the Sales Price definition found in Reg-1-007.01S.

108.02C The term “one nonitemized price” does not include transactions where:

108.02C(1) The sales price varies with the purchaser’s selection of products; or

108.02C(2) The sales price is separately identified by product on binding sales documents or other sales-related documents such as invoices, bills of sale, receipts, contracts, service agreements, and price lists made available to the purchaser in either paper or electronic form.

108.03 A transaction which otherwise meets the definition of a bundled transaction is not a bundled transaction if it is:

108.03A The retail sale of tangible personal property and a service where the tangible personal property is essential to the use of the service, is provided exclusively in connection with the service, and the true object or main product of the transaction is the service, or

108.03B The retail sale of services where one service is provided that is essential to the use or receipt of a second service the first service is provided exclusively in connection with the second service, and the true object or main product of the transaction is the second service, or

108.03C A transaction that includes taxable products and nontaxable products and the seller's cost or sales price of the taxable products is de minimis.

108.03C(1) De minimis means the taxable product is 10% or less of the total seller's cost or sales price.

108.03C(2) Sellers must use the full term of a service contract to determine if the taxable products are de minimis.

108.04 The determination as to whether a product is the true object or main product of a transaction will involve factors such as the business of the seller and the purchaser's object in engaging in the transaction.

108.05 Bundled transaction does not include the retail sale of food and food ingredients, drugs, over-the-counter drugs, durable medical equipment, mobility enhancing equipment, prosthetic devices, or home medical supplies which are sold for one nonitemized price with taxable property where the seller's cost or sales price of the exempt items is more than 50% of the seller's total cost or sales price of the bundle.

108.06 A seller of bundled transactions which include any telecommunications services, ancillary services, internet access, or audio or video programming services may identify in its books and records the sales price of any nontaxable products and collect and remit tax on only the sales price of the taxable products in the bundle. If the price attributable to the nontaxable products is not reasonably identifiable and verifiable, the entire charge for the bundled transaction is taxable.

(Sections 77-2703 and 77-2701.48, R.S.Supp. 2008. February 22, 2009.)

REG-1-109 COMMUNITY-BASED ENERGY DEVELOPMENT (C-BED) PROJECTS

109.01 Sales of qualified materials for use in the manufacture, installation, construction, repair, or replacement of qualified community-based energy development (C-BED) projects are exempt from sales and use tax provided the purchaser files the appropriate documentation as required under this regulation.

109.02 The following definitions will be used for this regulation.

109.02A C-BED project means a new wind energy project:

109.02A(1) That meets the eligible ownership structure and other requirements as set forth in Neb. Rev. Stat. § 77-2704.57 and §§ 70-1901 to 70-1909, and in this regulation;

109.02A(2) Which is supported by a resolution adopted by the county or counties in which the C-BED project is to be located or by the tribal council for a C-BED project located within the boundaries of an Indian Reservation located in Nebraska; and

109.02A(3) Where at least 33% of the gross power purchase agreement payments over the life of the power purchase agreement must flow to the qualified owners or local community. Equity partners, if any, may receive the remaining payments.

109.02B C-BED project developer means both the person arranging and organizing the C-BED project, and any person who is operationally responsible for the C-BED project.

109.02C Debt financing payments mean principal, interest, and other typical financing costs paid by the C-BED project developer to one or more third-party financial institutions for the financing or refinancing of the construction of the C-BED project. Debt financing payments do not include the repayment of principal at the time of a refinancing.

109.02D Electric supplier means any legal entity supplying, producing, or distributing electricity within the state for sale at wholesale or retail.

109.02E Electric utility means an electric supplier that:

109.02E(1) Owns more than 100 miles of 115 kilovolt or larger transmission lines in Nebraska;

109.02E(2) Owns more than 200 megawatts of electric generating facilities; and

109.02E(3) Has the obligation to directly serve more than 200 megawatts of wholesale or retail electric load in Nebraska.

109.02F Eligible ownership structure means:

109.02F(1) For a C-BED project that consists of more than two wind turbines:

109.02F(1)(a) The C-BED project must be developed by one or more qualified owners and may also include equity partners;

109.02F(1)(b) No single individual qualified owner may own, directly or indirectly, more than 15% of the C-BED project; and

109.02F(1)(c) No single electric supplier may own, directly or indirectly, more than 15% of the C-BED project, and the combined ownership of all electric suppliers cannot exceed 25% of the C-BED project.

109.02F(2) For a C-BED project that consists of one or two wind turbines:

109.02F(2)(a) The C-BED project must be developed by one or more qualified owners and may also include equity partners; and

109.02F(2)(b) No single electric supplier may own, directly or indirectly, more than 15% of the C-BED project, and the combined ownership of all electric suppliers cannot exceed 25% of the C-BED project.

109.02G Equity partner means a person who is not a qualified owner and who has received an ownership interest in exchange for an investment in the C-BED project.

109.02H Gross power purchase agreement payments mean the total amount of payments received from the purchaser of the power during the life of the agreement. For power purchase agreements entered into after August 29, 2009 and on or before December 31, 2011, if the qualified owners have a combined total of at least 33% of the equity ownership in the C-BED project, gross power purchase agreement payments will be reduced by the debt financing payments. For the purposes of determining eligibility of the project, an estimate of the payments and their recipients will be used.

109.02I New wind energy project means the manufacture, installation, construction, repair, or replacement of a device, such as a wind charger, windmill, or wind turbine, that is used to convert wind energy to electrical energy, or for the transmission of this electricity to the purchaser.

109.02J Payments to the local community mean payments that are made to local residents, property owners, or governments.

109.02J(1) Payments to the local community include, but are not limited to, lease payments to property owners on whose property a wind turbine is located, wind energy easement payments, real and personal property tax receipts from the C-BED project, and loan payments received or processed by a local financial institution that is actually financing construction of the project.

109.02J(2) Payments to the local community do not include construction costs, purchases of qualified or nonqualified property prior to the initial delivery of power payments or deposits received or processed by local financial institutions, and loan payments received or processed by a local financial institution on behalf of a non-local financial institution that is actually financing construction of the project.

109.02K Qualified property means any property used to manufacture, install, construct, repair, or replace a device used in a C-BED project such as a wind charger, windmill, or wind turbine including the substation, power lines connecting these devices together and power lines connecting the project to the electrical grid system, and property used to construct the pads that support the wind chargers, windmills, wind turbines, windmill towers, and substations.

109.02K(1) Nonqualified property means all property other than qualified property.

109.02K(2) Nonqualified property includes, but is not limited to: motor vehicles; maintenance equipment and tools; communication systems (i.e., meteorological towers and data recorders-computer systems that are not an integral part of the wind turbine); information centers and related security systems (i.e., cameras and recorders); erosion control systems (i.e., landscaping, grass seed, sod, and irrigation systems); office and maintenance buildings; computer equipment that is not an integral part of the wind turbine; office equipment; signage of any kind; furnishings; roads; bridges; gates; fencing; site lighting; and any materials for the electrical grid system. The purchase and use of property that is not qualified property is taxable.

109.02L Qualified owner means a person or organization with an equity ownership stake in the project who is:

109.02L(1) A Nebraska resident;

109.02L(2) A limited liability company that is organized under the Limited Liability Company Act and which has only Nebraska residents as members.

109.02L(3) A Nebraska nonprofit corporation organized under the Nebraska Nonprofit Corporation Act;

109.02L(4) An electric supplier; or

109.02L(5) A tribal council of a federally recognized American Indian Tribe with a reservation located in Nebraska.

109.03 To receive the sales and use tax exemption, the C-BED project developer must submit a Community-Based Energy Development Project Application and the following supporting documentation to the Nebraska Department of Revenue (Department):

109.03A The organization of the C-BED project;

109.03B The proposed distribution structure of the payments made under the power purchase agreement;

109.03C A copy of the power purchase agreement;

109.03D The C-BED project financial pro forma; articles of incorporation; operating agreements;

109.03E A copy of the resolution in support adopted by the county board or tribal council where the project is located; and

109.03F Written documentation demonstrating that a written offer to become a qualified owner has been made to each owner on whose property a turbine will be located to the extent feasible.

109.04 If the Department approves the C-BED Project Application, the Department will subsequently issue a Certificate of Exemption that may be used by the project developer and contractors to purchase qualified property tax-free.

109.04A To purchase qualified property tax-free, the C-BED project developer and any contractors must complete and issue to each vendor a Nebraska Resale or Exempt Sale Certificate, Form 13, and attach a copy of the Certificate of Exemption. The basis for the exemption must be entered on the Form 13.

109.04B A C-BED project developer or contractor may claim and receive a refund of any sales or use tax paid for purchases of qualified property made after the Department has received the application for the Certificate of Exemption, and before the Department has issued the Certificate of Exemption if the project met all the requirements of a C-BED project at the time of the purchase.

109.05 The Department may examine the actual payments to qualified owners and the local community and the distribution of the power purchase agreement payments to determine if the projected distributions were met. If the power purchase agreement payments to qualified owners and the local community do not meet the requirements of this regulation or Neb. Rev. Stat. § 77-2704.57, the Department may recover the amount of the sales or use tax that should have been paid

on property used at the project from the C-BED project developer, at any time up to and including three years after the end of the power purchase agreement.

109.05A The amount due under this section includes the sales and use taxes that would have been paid if no Certificate of Exemption had been granted, and interest at the rate specified in Neb. Rev. Stat. § 45-104.02, from the date the tax was due until the date the sales and use tax is paid.

109.05B At any time prior to the end of the power purchase agreement, the C-BED project developer may voluntarily surrender the Certificate of Exemption granted by the Tax Commissioner and pay the Department the amount of sales and use tax that should have been paid, plus interest.

109.06 To meet the requirements of the exemption, at least 33% of the gross power purchase agreement payments must be distributed to the qualified owners or the local community. Only payments made after the receipt of the first power purchase agreement payments will be considered when determining the percentage received by the qualified owners or the local community. Distribution of a tax attribute, a noncash benefit, loan proceeds, or some other payment that does not come out of the power purchase agreement payments will not be considered.

109.06A Payments to the local community are those payments that are defined above as payments to the local community in section 109.02J of this regulation.

109.06B For power purchase agreements entered into after August 29, 2009 and on or before December 31, 2011, if the qualified owners have a combined total of at least 33% of the equity ownership in the C-BED project, the gross power purchase agreement payments will be reduced by the debt financing payments.

109.06C To prevent the same payment from being counted both as a distribution to the owner and as a local payment or debt financing payment, the distributions to the qualified owners for any purpose will be considered prior to all expenses other than expenses that are considered to be local payments, or any debt financing that reduces the gross power purchase agreement payments. Any expenses that are allocated to the owners must be allocated in the same proportion as the distributions of the power purchase agreement payments for the same year.

109.06D In determining if debt financing may be excluded under section 1-109.06B, the percentage of ownership that is considered is the percentage of ownership for the same year that the debt financing payment is to be excluded.

109.07 Changes in Ownership Structure. If there is any change in the ownership structure after the application is submitted or approved, including a change of an equity partner, a new application must be submitted to the Department. If the new ownership structure does not meet the statutory

requirements and the new application is not approved by the Department, all purchases of qualifying property after the effective date of the change in ownership structure are taxable.

109.07A A C-BED project developer must notify the electric utility that has a power purchase agreement with a C-BED project if there is a change in the ownership structure which makes the project no longer eligible as a C-BED project.

109.07B The Tax Commissioner must notify an electric utility that has a power purchase agreement with a C-BED project if there is a change in the ownership structure which makes the project no longer eligible as a C-BED project.

109.07C Acquisition of a C-BED project by an electric utility prior to the end of the power purchase agreement disqualifies the C-BED project for the sales and use tax exemption for all purchases of qualifying property made after the date of the acquisition by the electric utility, and may require payment of any sales and use taxes not previously paid if the payments to the qualified owners and the local community no longer meet the required criteria for the period the agreement was in effect.

109.08 Changes in the Power Purchase Agreement. The C-BED project developer must notify the Tax Commissioner of any changes in the power purchase agreement or of the termination of the agreement. If the power purchase agreement is amended, a new application must be submitted. If the distribution of the gross power purchase agreement payments no longer meets the statutory requirements and the new application is not approved by the Department, the Department may recover the amount of the sales or use tax that should have been paid on materials used at the project from the C-BED project developer, at any time up to and including three years after the end of the power purchase agreement, and interest at the rate specified in Neb. Rev. Stat. § 45-104.02, from the date the tax was due until the date the sales or use tax is paid.

109.09 Changes in Documents Supporting the Application. The C-BED project developer must notify the Tax Commissioner of any changes in any of the other documents supporting the application during the life of the power purchase agreement. The Tax Commissioner will determine if a new application must be submitted based on the changes made.

(Sections 70-1001.01, 70-1901 to 70-1909 and 77-2704.57, R.R.S. 2009. June 6, 2011.)

REG-1-110 CLAIMS FOR REFUND OF SALES OR USE TAX

110.01 Any person who has overpaid any sales or use tax may file a claim for a refund of the amount of tax overpaid. A claim for refund of sales or use tax (claim) must be filed with the Nebraska Department of Revenue (Department) in accordance with Reg-33-002.01A.

110.01A The Department will not accept a claim if the amount claimed is less than \$2.

110.01B If the claimant desires a hearing, a request for hearing must be made when the claim is filed or prior to the Tax Commissioner taking action on the claim. A claim is not presumed to be a request for a hearing.

110.01C Only the person who made the overpayment, or the person's attorney-in-fact, executor, personal representative, or administrator, may file a claim.

110.01D A claim must be filed within the time specified in Reg-33-002.01B.

110.02 The Tax Commissioner must allow or disallow a claim within 180 days after it has been filed.

110.02A A request for a hearing waives the 180-day period. The claimant and the Tax Commissioner may also mutually agree to extend the 180-day period.

110.02B If a hearing has not been requested, and the Tax Commissioner has not acted on the claim within 180 days or the period agreed to by the claimant and the Tax Commissioner, whichever is later, the claim is deemed to have been allowed.

110.02C Within 30 days after disallowing any claim in whole or in part, the Tax Commissioner will notify the claimant of the action taken in the same manner as a notice of deficiency determination.

110.03 The amount of overpayment may be credited or offset against any sales, use, income, or any other tax, and any fees, interest, or penalties then due and payable to the state from the claimant. Any remaining balance may be refunded to the claimant or its successor. Refunds of sales and use tax may be paid electronically.

110.04 Interest will not be allowed on claims if the tax was originally paid voluntarily.

(Neb. Rev. Stat. §§ 77-1784, 77-2708, 77-27,194.01, 77-4108.01, 77-5729, and 77-5804. July 3, 2013.)